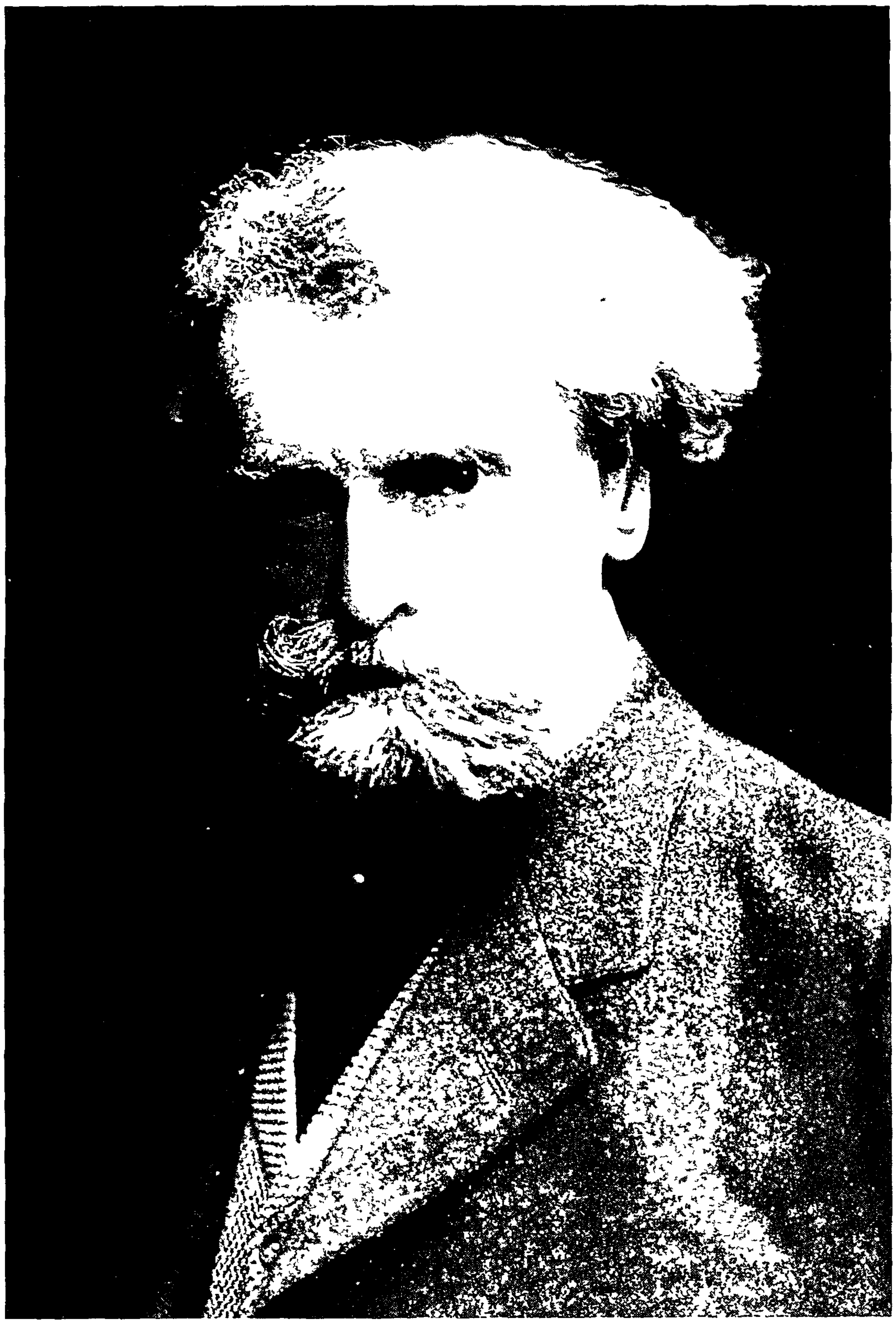
The Library of Congress'

EARLY STATE RECORDS PROJECT

converted from the original microfilm held by the
Vincent C. Immel Law Library, Saint Louis University

through the generous support of a grant from the

Council on Library and Information Resources



W. A. Clark

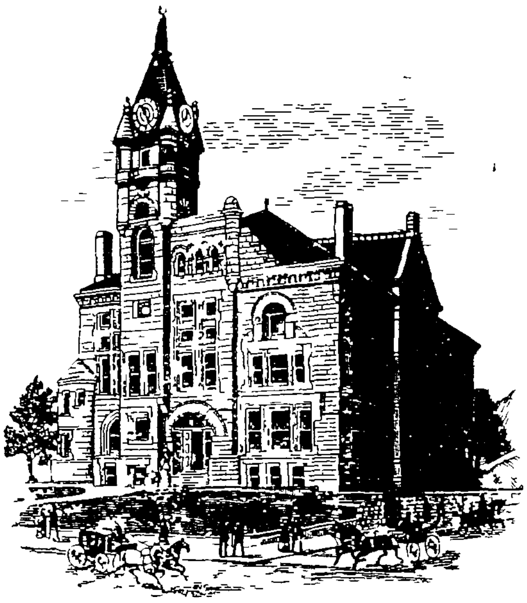
PROCEEDINGS AND DEBATES

OF THE

22 -

CONSTITUTIONAL CONVENTION

Held in the City of Helena, Montana
July 4th, 1889, August 17th, 1889



County Courthouse, Used as Convention Hall

State Publishing Company
Helena, Montana
1921

JK7325
1889
.A2

> “That government of the people,
> by the people, for the people,
> shall not perish from the earth”

LIBRARY OF CONGRESS
RECEIVED
MAY 1 1922
DOCUMENTS DIVISION

FOREWORD

Montana was organized as a Territory, by Act of Congress, approved by Abraham Lincoln, May 26, 1864, and became the forty-first state of the Union under the proclamation of Benjamin Harrison on November 8, 1889.

During its existence as a Territory, there were held three constitutional conventions. The first was called without authority of law, by proclamation of Secretary and Acting Governor T. F. Meagher, on the petition of a number of citizens. This movement for a constitutional convention was looked on with disfavor by most residents of the Territory

At that time, there were nine counties in Montana. Under Acting Governor Meagher's proclamation, the membership in the convention was distributed as follows: Beaverhead 5, Deer Lodge 10, Edgerton (now Lewis and Clark) 10, Gallatin 5, Jefferson 5, Madison 10, and Missoula 5

This convention met at Helena April 9, 1866, and completed its work on April 14. Eight of the delegates did not attend its sessions.

The fruit of its labors was a constitution, copied largely from that of California. The completed manuscript was taken by Thomas E. Tutt, a member from Edgerton county, to St. Louis with the understanding that it should be published in pamphlet form. This was never done and as no copy of the instrument was deposited in the office of the Secretary of the Territory at Virginia City, this interesting historical document was lost from the archives of Montana.

Two members of the convention of 1866 still survive—John H. Shober and W. Y. Pemberton.

Convention of 1884

The second constitutional convention was convened at Helena January 14, 1884, under the authorization of House Joint Resolution, approved March 7, 1883, and concluded its labors on February 9.

This convention consisted of 45 members, apportioned among the thirteen counties as follows: Beaverhead 2, Dawson 1, Choteau 2, Custer 3, Yellowstone 2, Deer Lodge 3, Gallatin 5, Jefferson 2, Lewis and Clark 4, Madison 2, Meagher 3, Missoula 4, Silver Bow 6. In addition to these two delegates were also allotted to each of the three judicial districts into which the Territory was then divided.

An elaborate constitution was drafted during the 27 days session, which was ratified at the general election in November, but Congress failed to take any action on the subject of admission into the Union.

Convention of 1889

Under the provisions of the Enabling Act of Congress, approved February 22, 1889, the Legislature again provided the necessary machinery for holding the third constitutional convention. This convention convened at Helena July 4, 1889, and adjourned on August 17. The body consisted of 75 members distributed among the 16 counties of the Territory.

This constitution was ratified at the election called for that purpose on October 1, and on November 8, President Harrison issued his proclamation admitting Montana into the Union as a sovereign state.

Since its adoption, there have been ten amendments submitted by the Legislature and ratified by the votes of the state. In addition to these, two others were submitted by the Seventeenth Legislative Assembly which will be acted upon at the coming general election.

An Act of the Twelfth Legislative Assembly authorized the publication of the debates and proceedings of the Convention of 1889 and made an appropriation therefor. No action was taken in the matter, however, until the Legislature in 1919 again made an appropriation of $7,000 for the same purpose. This publication is the result of that action.

As the publication of Madison's private journal of the proceedings of the Federal Constitutional Convention of 1787 has thrown great light upon the debates attendant upon the creation of that historic document, it is hoped that the present publication will be of real benefit to students of Montana's history as to the men and motives involved in writing our own basic law.

Helena, February 6, 1922.

Jos. M. Dixon

Governor.

MEMBERSHIP
OF THE
CONSTITUTIONAL CONVENTION
1889

EDWARD D. AIKEN

Silver Bow County; Residence, Butte City; Foundryman, Democrat. Arrived in Montana August 28, 1864. Born July 6, 1838, at Grafton, Windham County, Vermont.

Deceased April 22, 1900

PETER BREEN

Jefferson County, Residence, Wickes, Laborer, Democrat. Arrived in Montana April, 1884, Born October 5, 1860, Near Olatha, Johnson County, Kansas.

Deceased October 4, 1920

EDWARD BURNS

Deer Lodge County, Elliston; Merchant, Democrat. Arrived in Montana August 13, 1884, Born June 8, 1855, Rochester, New York.

Deceased

WALTER A BURLEIGH

Custer County; residence Miles City; Lawyer, Republican. Arrived in Montana July 10, 1879, Born October 25, 1820, Waterville, Kennebec County, Maine.

Deceased March 7, 1896

DAVID G. BROWNE

Choteau County; residence, Fort Benton; Government contractor, Democrat. Arrived in Montana March 1878, arrived in America February 1876, Born January 16, 1859, Miller Hill, County Down, Ireland.

Deceased December 10, 1919

WALTER MANSUR BICKFORD

Missoula County; residence, Missoula; Lawyer, Democrat. Arrived in Montana June 17, 1884, Born February 25, 1852, Newburgh, Penobscot County, Maine.

J. F. BRAZELTON

Deer Lodge County; residence, Deer Lodge; County Clerk, Democrat. Arrived in Montana March 3, 1884, Born May 19, 1858 at New Market, Jefferson County, Tennessee.

Deceased December 19, 1917

Simeon R. Bufobd

Madison County; residence, Virginia City; Merchant, Democrat. Arrived in Montana September 5, 1865, Born March 2, 1846, at Canton, Lewis County, Missouri.

Deceased January 15, 1905

William Mason Bullard

Jefferson County; residence, Wickes; Physician and Surgeon, Republican. Arrived in Montana April 11, 1880, Born April 23, 1853, at Indianapolis, Marion County, Indiana.

Deceased April 23, 1900

Andrew J. Burns

Lewis and Clarke County; residence, Marysville; Mining Superintendent, Republican. Arrived in Montana August 9, 1881, Born May 5, 1828, at Congress Township, Wayne County, Ohio.

Deceased November 26, 1893

Alexander F. Burns

Lewis and Clarke County; residence, East Helena; Farmer, Democrat. Arrived in Montana October 4th, 1866, Born December 7, 1832, at Liberty, Clay County, Missouri.

Deceased May 27, 1908

Walter Cooper

Gallatin County; residence, Bozeman; Mines and Real Estate, Democrat. Arrived in Montana, February 9, 1864, Born July 4, 1843 at Stirling, Cayuga County, New York.

Timothy E. Collins

Cascade County; residence, Great Falls; Banker, Democrat. Arrived in Montana November 1864, arrived in America 1850, Born November 25, 1843 at Cork, Ireland.

Deceased August 30, 1908

William Andrews Clark

Silver Bow County; residence, Butte; Banker, also Mining and Reduction of Ores, Democrat. Arrived in Montana July 3, 1863, Born January 8, 1839, near Connellsville, Fayette County, Pennsylvania.

Charles E. Conrad

Choteau County; residence, Fort Benton, Banking and Merchandising, Democrat. Arrived in Montana June 30, 1868, Born May 20, 1850, Warren County, Virginia.

Deceased November 27, 1902

Milton Cauby

Lewis and Clarke County; residence, East Helena; Hotel-keeper and prospector, Republican. Arrived in Montana February 5, 1885. Born January 1, 1838 at Virginia, Cass County, Illinois.

WILLIAM ALLEN CHESSMAN

Lewis and Clarke County; residence, Helena; Capitalist, Republican. Arrived in Montana April 20, 1865. Born August 19, 1830 at Weymouth, Norfolk County, Massachusettes.

Deceased October 2, 1920

B. PLATT CARPENTER

Lewis and Clarke County; residence, Helena, Lawyer, Republican. Arrived in Montana January 5, 1885. Born May 14, 1837 at Stanford, Duchess County, New York. Deceased December 24, 1921.

ARTHUR J. CRAVEN

Lewis and Clarke County; residence, Helena; Lawyer, Republican. Arrived in Montana August 7, 1884. Born December 12, 1857 at Lancaster, Jefferson County, Indiana.

EDWARD CARDWELL

Jefferson County; Stock Growing and Farming, Democrat. Arrived in Montana 1863. Arrived in America 1848. Born 1832 at Glenavey, Antrim County, Ireland.

Deceased May 4, 1912

JAMES E. CALLAWAY

Madison County; residence, Virginia City; Lawyer, Radical Republican. Arrived in Montana March 1871. Born July 7, 1835 in the "Backwoods" Trigg County, Kentucky.

Deceased August 21, 1905

THOMAS F. COURTNEY

Silver Bow County; residence, Butte City; Grocer, Democrat. Arrived in Montana July 16, 1880. Born April 4, 1856 at Minersville, Schuylkill County, Pennsylvania.

Deceased March 4, 1901

WILLIAM W. DIXON

Silver Bow County; residence, Butte City; Lawyer, Democrat. Arrived in Montana May 15 1866. Born June 3, 1838 at Brooklyn, New York.

Deceased November 13, 1910

DAVID M. DURFEE

Deer Lodge County; residence, Philipsburg; Lawyer, Democrat. Arrived in Montana March 12, 1882. Born July 22, 1855 at Duanesburgh, Schenectady County, New York.

WILLIAM DYER

Silver Bow County; residence, Butte; Miner, Republican. Arrived in Montana March 16, 1878. Arrived in America July 8, 1873. Born February 28, 1853 at St. Anstell, Cornwall, England.

Deceased November 17, 1911

GEORGE O. EATON

Park County; residence, Livingston; Miner, Republican. Arrived in Montana 1882. Born May 14, 1848 at Warren, Knox County, Maine.

WILLIAM T. FIELD

Park County; residence Livingston; Locomotive Engineer, Democrat. Arrived in Montana September 22, 1882. Born August 13, 1859 at Joliet, Will County, Illinois.

WARREN C. GILLETTE

Lewis and Clarke County; residence Dearborn; Wool-grower, Republican. Arrived in Montana September, 1862. Born March 10, 1832 at Orleans, Ontario County, New York.

Deceased September 8, 1915

FIELDING L. GRAVES

Beaverhead County; residence, Bannack; Merchant, Democrat. Arrived in Montana June 22, 1865. Born July 19, 1833 at Fayette County, Kentucky.

Deceased December 26, 1913

O. F. GODDARD

Yellowstone County; residence, Billings; Lawyer, Republican. Arrived in Montana March 16, 1883. Born January 20, 1853 near Troy, Davis County, Iowa.

J. E. GAYLORD

Jefferson County; residence, Whitehall; Mining. Arrived in Montana February 15, 1883. Born January 14, 1844 at Liberty, Sullivan County, New York.

Deceased July 23, 1920

PARIS GIBSON

Cascade County; residence, Great Falls; Real Estate, Democrat. Arrived in Montana March 1879. Born July 1, 1830 at Brownfield, Oxford County, Maine.

Deceased December 16, 1920

LEWIS H. HERSHFIELD

Lewis and Clarke County; residence, Helena; Banker, Republican. Arrived in Montana July 1, 1864. Born August 12, 1837, at Utica, Oneida County, New York.

Deceased December 4, 1910

CHARLES S. HARTMAN

Gallatin County; residence, Bozeman; Lawyer, Republican. Arrived in Montana January 1882. Born March 1, 1861 at Monticello, White County, Indiana.

HENRI J. HASKELL

Dawson County; residence Glendive; Attorney-at-law, Republican. Arrived in Montana June 24, 1882. Born July 20, 1843 at Palmyra, Somerset County, Maine.

Deceased March 11, 1921

LUKE D. HATCH

Missoula County; residence Stevensville; Postmaster and Miner, Democrat. Arrived in Montana June 20, 1876, (had been in the territory before). Born October 3, 1844 at Mason Township, Cass County, Michigan.

Deceased December 7, 1920

JOSEPH HOGAN

Silver Bow County; residence, Walkerville; Miner, Democrat. Arrived in Montana June 20, 1883. Born November 24, 1862 at Sweet Chalybeate Springs, Alleghany County, Virginia.

Deceased May 27, 1900

S. S. HOBSON

Fergus County; residence, Utica; Stockgrower, Republican. Arrived in Montana March 1880. Born April 29, 1839 at Buxton, York County, Maine.

ROBERT E. HAMMOND

Jefferson County; residence, Elkhorn; School Teacher, Republican. Arrived in Montana July 1, 1887 Born September 17, 1859 at Ashland, Greenup County, Kentucky.

RICHARD OWEN HICKMAN

Madison County; residence, Virginia City; Merchant and Miner, Republican. Arrived in Montana July 7, 1864. Born November 1, 1831, at Shelbyville, Shelby County, Kentucky.

Deceased July 20, 1895

ALLAN R. JOY

Park County; residence Livingston; Attorney-at-law, Republican. Arrived in Montana June 10, 1883. Born June 15, 1857 at Ellsworth, Hancock County, Maine.

THOMAS JOYES

Jefferson County; residence, Boulder; Lawyer, Democrat. Arrived in Montana June 3, 1885. Born February 14, 1858 at Louisville, Jefferson County, Kentucky.

Deceased June 4, 1893

CONRAD KOHRS

Deer Lodge County; residence, Deer Lodge; Farmer and Stockgrower, Republican. Arrived in Montana July 1862, Arrived in America 1852. Born August 5, 1835 at Wevelsfeth, Wilster March, Holstein, (then Denmark now Prussia), Germany.

Deceased July 24, 1920

HIRAM KNOWLES

Silver Bow County; residence, Butte City; Lawyer, Republican. Arrived in Montana June 1, 1866. Born January 18, 1834 at Hampden, Penobscot County, Maine.

Deceased April 6, 1911

WILLIAM J. KENNEDY

Missoula County; residence Victor; Clerk State Supreme Court, Republican. Arrived in Montana April 30, 1880. Arrived in America June 12, 1879. Born April 11, 1851 at Bowmanville, Durham County, Canada.

Deceased August 26, 1920

HENRY KNIPPENBERG

Beaverhead County; residence Glendale; Mining and Banking, Republican. Arrived in Montana April 3, 1881. Arrived in America 1849. Born December 27, 1843 at Hamm near the City of Woerms, Hesse Darmstadt, Germany.

J. E. KANOUSE

Meagher County; residence, Townsend, Lawyer, Democrat. Arrived in Montana August 6, 1886. Born December 18, 1845 at Woodstock, New Jersey.

LLEWELLYN AUGUSTUS LUCE

Gallatin County; residence, Bozeman; Lawyer, Democrat. Arrived in Montana March 29, 1882. Born November 11, 1837 at Readfield, Kennebec County, Maine.

Deceased January 4, 1903

CHARLES H. LOUD

Custer County; residence, Miles City; Stock-growing, Republican. Arrived in Montana January 28, 1880. Born November 20, 1858 at Weymouth, Norfolk County, Massachusetts.

WILLIAM MUTH

Lewis and Clarke County; residence, Helena; Real Estate, Democrat. Arrived in Montana December 3, 1873. Born October 2, 1851 at Wheeling, Ohio County, Virginia.

SAMUEL L. MITCHELL

Choteau County; residence, Choteau; Stock raiser, Republican. Arrived in Montana April 1, 1865. Arrived in America February 5, 1852. Born July 10, 1842 at Coleraine, Derry County, Ireland.

Deceased February 3, 1903

CHARLES S. MARSHALL

Missoula County; residence, Missoula; Lawyer, Republican. Arrived in Montana May 15, 1888. Born January 19, 1821 at Paris, Bourbon County, Kentucky.

Deceased November 13, 1896

WILLIAM MAYGER

Lewis and Clarke County; residence, Marysville; Mining Superintendent, Democrat. Arrived in Montana June 1864. Born November 24, 1842 at St. Louis, Missouri.

Deceased January 20, 1918

ALFRED MYERS

Yellowstone County; residence, Billings; Stock Grower, Democrat. Arrived in Montana September 2, 1866. Born January 10, 1840 at Macomb, McDonough County, Illinois.

Deceased June 23, 1920

C. R. MIDDLETON

Custer County; residence, Miles City; Lawyer, Democrat. Arrived in Montana July 4, 1884. Born January 31, 1853 at Afton, Washington County, Minnesota.

JOSEPH E. MARION

Missoula County; residence, Frenchtown; Merchant, Democrat. Arrived in Montana June, 1861. Arrived in St. Louis September, 1860. Born June 1, 1842 at Contrecœur, Verchires County, Province of Quebec, Canada.

Deceased September 27, 1901

MARTIN MAGINNIS

Lewis and Clarke County; residence, Helena; Mining, Democrat. Arrived in Montana August 1866. Born October 27, 1841, at Walworth, Wayne County, New York.

Deceased March 27, 1919

PERRY W. McADOW

Fergus County; residence, Maiden; Quartz Mining, Democrat. Arrived in Montana July 10, 1861. Born July 28, 1838 at Maysville, Mason County, Kentucky.

Deceased July 12, 1918.

WILLIAM PARBERRY

Meagher County; residence, White Sulphur Springs; Physician. Arrived in Montana August 7, 1865. Born March 12, 1833 at Bourbon County, Kentucky.

Deceased October 12, 1902

JOHN CLARK ROBINSON

Deer Lodge County; residence, Deer Lodge; Lawyer, Democrat. Arrived in Montana May 1866. Born March 9, 1834, near Palmyra, Marion County, Missouri.

Deceased December 5, 1897

WILLIAM R. RAMSDELL

Missoula County; residence, Egan; Mercantile and Cattle-raising, Democrat. Arrived in Montana 1881. Born June 7, 1860 at Mantorville, Lodge County, Minnesota.

LOUIS ROTWITT

Meagher County; residence, White Sulphur Springs; Mining, Republican. Arrived in Montana May 31, 1866. Arrived in America April 23, 1857. Born July 23, 1838 at Hochheim-on-the-Main, Duchy of Nassau, Germany.

Deceased December 6, 1910

G. J. REEK

Deer Lodge County; residence, Granite; School Teacher, Republican. Arrived in Montana September 1887. Born March 17, 1856 at Linn, County of Walworth, Wisconsin.

Deceased July 27, 1897

JOHN EZRA RICKARDS

Silver Bow County; residence, Butte City; Merchant, Republican. Arrived in Montana October 1882. Born July 23, 1848 at Delaware City, Newcastle County, Delaware.

FRANCIS E. SARGEANT

Silver Bow County; residence Butte City; Mining Secretary, Republican. Arrived in Montana August 1865. Born August 2, 1841 at Peacham, Caledonia County, Vermont.

GEORGE W. STAPLETON

Silver Bow County; residence, Butte City; Attorney-at-law, Democrat. Arrived in Montana July 1862. Born November 28, 1834 at Knightstown, Rush County, Indiana.

Deceased April 25, 1910

LEOPOLD FRED SCHMIDT

Silver Bow County; residence, Butte; Brewer, Independent. Arrived in Montana May 28, 1870, arrived in America, March 11, 1866. Born January 23, 1846 at Dornassenheim, Oberhessen County, Germany.

Deceased September 24, 1914

JOSEPH K. TOOLE

Lewis and Clarke County; residence, Helena; Lawyer, Democrat. Arrived in Montana May 1869. Born May 12, 1851 at Savannah, Andrew County, Missouri.

JOHN R. TOOLE

Deer Lodge County; residence, Anaconda; Mining, Democrat. Arrived in Montana December 21, 1884. Born July 3, 1850 at Weston, Aroostook County, Maine.

Deceased March 4, 1916

CHARLES M. WEBSTER

Cascade County; residence, Great Falls; Secretary Great Falls Water Power and Townsite Company, Republican. Arrived in Montana April 20, 1886. Born April 12, 1858 at Zumbrota, Goodhue County, Minnesota.

Deceased May 7, 1909

WILLIAM H. WATSON

Fergus County; residence, Lewistown; Retired, Republican. Arrived in Montana June 1, 1882. Born August 31, 1822 at Geneva, Ontario County, New York.

Deceased August 17, 1894

GEORGE B. WINSTON

Deer Lodge County; residence, Anaconda; Lawyer, Democrat. Arrived in Montana May 23, 1883. Born October 9, 1861 at Jefferson City, Cole County, Missouri.

CHARLES S. WARREN

Silver Bow County; residence, Butte; Mining Operator, Republican. Arrived in Montana August 20, 1866. Born November 20, 1847 at Utica, LaSalle County, Illinois.

Deceased April 13, 1921

HENRY R. WHITEHILL

Deer Lodge County; residence, Deer Lodge; Attorney-at-law, Republican. Arrived in Montana August 15, 1881. Born March 26, 1838 at Hookstown, Beaver County, Pennsylvania.

Deceased June 11, 1905

AARON C. WITTER

Beaverhead County; residence, Dillon; Mining, Republican. Arrived in Montana July 1875. Born June 13, 1849 at South Bend, St Joseph County, Indiana.

Deceased January 31, 1891

LIST OF PORTRAITS

Aiken, E. D. 208
Bickford, W. M. 400
Brazelton, J. F. 112
Breen, Peter 976
Browne, D. G. 112
Buford, S. R. 400
Bullard, W. M. 208
Burleigh, W. A. 208
Burns, A. F. 304
Burns, A. J. 976
Burns, Edward 592
Callaway, J. E. 208
Cardwell, E. 880
Carpenter, B. P. 496
Cauby, Milton 784
Chessman, W. A. 112
Clark, W. A., President Frontespiece
Clowes, H. E., Chaplain 976
Collins, T. E. 304
Connolly, C. P., Stenographer 880
Conrad, C. E. 16
Cooper, Walter 208
Courtney, T. F. 496
Craven, A. J. 496
Dixon, W. W. 112
Durfee, D. M. 784
Dyer, William 976
Eaton, G. O. 304
Field, W. T. 112
Gaylord, J. E. 976
Gibson, Paris 784
Gillette, W. C. 592
Goddard, O. F. 688
Graves, F. L. 16
Hammond, R. E. 496
Hartman, C. S. 400
Haskell, H. J. 304
Hatch, L. D. 688
Hershfield, L. H. 688
Hickman, R. O. 880
Hobson, S. S. 688
Hogan, Joseph 16
Joy, Allan R. 688
Joyes, Thomas 400
Kanouse, J. E. 496
Kennedy, W. J. 16
Knippenberg, H. 592
Knowles, Hiram 880
Kohrs, Conrad 304
Loud, C. H. 16
Luce, L. A. 496
Maginnis, M. 208
Marion, J. E. 112
Marshall, C. S. 592
Mayger, William 400
McAdow, P. W. 304
Middleton, C. R. 688
Mitchell, S. L. 784
Muth, William 880
Myers, Alfred 592
Parberry, W. 976
Ramsdell, W. R. 784
Reek, G. J. 496
Rickards, J. E. 304
Robinson, J. C. 976
Rotwitt, Louis 592
Sargeant, F. E. 784
Schmidt, L. F. 400
Stapleton, G. W. 688
Todd, W. H., Chief Clerk 784
Toole, J. K. 16
Toole, J. R. 208
Warren, C. S. 592
Watson, W. H. 112
Webster, C. M. 880
Whitehill, H. R. 400
Winston, G. B. 16
Witter, A. C. 880

ENABLING ACT

(*Public No. 52*)

An act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Sec. 1 That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided.

Sec. 2. The area comprising the Territory of Dakota shall, for the purposes of this act, be divided on the line of the seventh standard parallel produced due west to the western boundary of said Territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention. at the time prescribed in this act, at the city of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time assemble in convention at the city of Sioux Falls.

Sec. 3 That all persons who are qualified by the laws of said Territories to vote for representatives to the legislative assembly thereof, are hereby authorized to vote for and choose delegates to form conventions in said proposed States; and the qualifications for delegates to such conventions shall be such as by the laws of said Territories respectively persons are required to possess to be eligible to the legislative assemblies thereof; and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed States, in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionments shall be made by the governor, the chief-justice, and the secretary of said Territories; and the governor of said Territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed States, to be held on the Tuesday after the second Monday in May, eighteen hundred and eighty-nine, which proclamation shall be issued on the fifteenth day of April, eighteen hundred and eighty-nine, and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such convention issued in the same manner as is prescribed by the laws of the said Territories regulating elections therein for Delegates to Congress, and the number of votes cast for delegates in each precinct shall also be returned The number of delegates to said conventions respectively shall be seventy-five, and all persons resident in said proposed States, who are qualified voters of said Territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the constitutions

Sec. 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said Territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the Fourth day of July, eighteen hundred and eighty-nine, and, after organization, shall declare, on behalf of the people of said proposed States, that they adopt the Constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and State governments for said proposed States, respectively.

The constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide, by ordinances irrevocable without the consent of the United and the people of said States:

First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of said States shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said States shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the States on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said States from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation, but said ordinances shall provide that all such lands shall be exempt from taxation by said States so long and to such extent as such act of Congress may prescribe.

Third. That the debts and liabilities of said Territories shall be assumed and paid by said States, respectively.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said States, and free from sectarian control.

Sec. 5. That the convention which shall assemble at Bismarck shall form a constitution and State government for a State to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a constitution and State government for a State to be known as South Dakota; PROVIDED, That at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot the words, "For the Sioux Falls constitution," or the words, "against the Sioux Falls constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section three of this act; and if a majority of all votes cast on this question shall be "for the Sioux Falls constitution" it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for ratification or rejection at the election hereinafter provided for in this act, the constitution formed at Sioux Falls and adopted November third, eighteen hundred and eighty-five, and also the articles and propositions separately submitted at that election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed State to the reapportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the constitution shall be for the constitution irrespective of the articles separately submitted, the State of South Dakota shall be admitted as a State in the Union under said constitution as hereinafter provided; but the archives, records, and books of the Territory of Dakota shall remain at Bismarck, the capital of North Dakota, until an agreement in reference thereto is reached by said States. But if at the election for delegates to the constitutional convention in South Dakota a majority of all the votes cast at that election shall be "against the Sioux Falls constitution," then and in that event shall be the duty of the convention which will assemble at the city of Sioux Falls on the fourth day of July, eighteen hundred and eighty-nine, to proceed to form a constitution and State government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

Sec 6 It shall be the duty of the constitutional conventions of North Dakota and South Dakota to appoint a joint commission, to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said Territory, and agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the Territory, which shall be assumed and paid by each of the proposed States of North Dakota and South Dakota, and the agreement reached respecting the Territorial debts and liabilities shall be incorporated in the respective constitutions, and each of such States shall obligate itself to pay its proportion of said debts and liabilities the same as if they had been created by such States respectively.

Sec. 7 If the constitution formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the Territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the Territory so rejecting its proposed constitution shall continue under the territorial government of the present territory of Dakota, but shall, after the State adopting its constitution is admitted into the Union, be called by the name of the Territory of North Dakota or South Dakota, as the case may be: PROVIDED, That if either of the proposed States provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the Governor of the Territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed State for ratification or rejection, at such time as said convention may determine, and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed State

Sec 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls constitution of eighteen hundred and eighty-five, after having amended the same as provided is section five of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, eighteen hundred and eighty-nine; but if said constitutional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection at an election to be held in said proposed state on the said first Tuesday in October And the constitutional conventions which may assemble in North Dakota, Montana, and Washington shall provide in like manner for submitting the constitutions formed by them to the people of said proposed States, respectively, for ratification or rejection at elections to be held in said proposed States on the first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed States shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said Territories, who, with the governor and chief justice thereof, or any two of them, shall canvass the same, and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the President of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitutions and governments of said proposed States are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed States which have adopted constitutions and formed State governments as herein provided shall be deemed admitted by Congress, into the Union under and by virtue of this act on an equal footing with the original States from and after the date of said proclamation.

Sec. 9. That until the next general census, or otherwise provided by law, said States shall be entitled to one Representative in the House of Representatives of the United States, except South Dakota, which shall be entitled to two; and the Representatives to the Fifty-first Congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said State officers are elected and qualified under the provisions of each constitution and the States, respectively, are admitted into the Union, the Territorial officers shall continue to discharge the duties of their respective offices in each of said Territories.

Sec. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such section, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior; PROVIDED, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain.

Sec. 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may. under such regulations as the legislatures shall prescribe. be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such lands shall not be subject to pre-emption, homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

Sec. 12. That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands within said States, to be selected and located in legal subdivisions as provided in section ten of this act, shall be, and are hereby, granted to said States for the purpose of erecting public buildings at the capital of said States for legislative, executive and judicial purposes.

Sec. 13. That five per centum of the proceeds of the sale of public lands lying within said States which shall be sold by the United States subsequent to the admission of said States into the Union, after deducting all the expenses incident to the same, shall be paid to the said States, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said States, respectively.

Sec. 14. That the lands granted to the Territories of Dakota and Montana by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the States of South Dakota, North Dakota, and Montana, respectively, if such States are admitted into the Union, as provided in this act, to the extent of the full quantity of seventy-two sections to each of said States, and any portion of said lands that may not have been selected by either of said Territories of Dakota or Montana may be selected by the respective States aforesaid; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said States severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July seventeenth, eighteen hundred and fifty-four, to be reserved for university purposes in the Territory of Washington, as, together with the lands confirmed to the vendees of the Territory by the act of March fourteenth, eighteen hundred and sixty-four, will make the full quantity of seventy-two entire sections, are hereby granted in the like manner to the State of Washington for the purpose of a university in said State. None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided in section eleven of this act. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said States, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational schools, college or university. The section of land granted by the act of June sixteenth, eighteen hundred and eighty, to the Territory of Dakota, for an asylum for the insane shall, upon admission of the said State of South Dakota into the Union, become the property of said State.

Sec. 15 That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the Territory of Dakota," approved March second, eighteen hundred and eighty-one, together with the buildings thereon, be, and the same is hereby granted, together with any unexpended balances of the moneys appropriated therefor by said act, to said State of South Dakota for the purposes therein designated; and the States of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March second, eighteen hundred and eighty-one, for the Territory of Dakota The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the State of Montana.

Sec 16. That ninety thousand acres of land, to be selected and located as provided in section ten of this act, are hereby granted to each of said States, except to the State of South Dakota, to which one hundred and twenty thousand acres are granted, for the use and support of agricultural colleges in said States, as provided in the acts of Congress making donations of lands for such purpose

Sec. 17. That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September fourth, eighteen hundred and forty-one which act is hereby repealed as to the States provided for by this act, and in lieu of any claim or demand by the said States, or either of them, under the act of September twenty-eight, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to the States provided for in this act, and in lieu of any grant of saline lands to said States, the following grants of land are hereby made, to-wit:

To the State of South Dakota: For the school of mines, forty thousand acres; for the reform school, forty thousand acres; for the deaf and dumb asylum, forty thousand acres; for the agricultural college, forty thousand acres; for the university, forty thousand acres; for State normal schools, eighty thousand acres; for public buildings at the capital of said State, fifty thousand acres, and for such other educational and charitable purposes as the legislature of said State may determine, one hundred and seventy-five thousand acres; in all five hundred thousand acres

To the State of North Dakota a like quantity of land as is in this section granted to the State of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the State of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for State normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a state reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the State, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.

To the State of Washington: For the establishment and maintenance of a scientific school, one hundred thousand acres; for State normal schools, one hundred thousand acres; for public buildings at the State capital, in addition to the grant hereinbefore made for that purpose, one hundred thousand acres; for State charitable, educational, penal, and reformatory institutions, two hundred thousand acres.

That the States provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this Act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective States may severally provide.

Sec. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivisions or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said States are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unapporpriated lands in said States, in lieu thereof, for the use and for the benefit of the common schools of said States

Sec. 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective States entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said States the number of acres in each heretofore donated by Congress to said Territories for similar objects.

Sec. 20. That the sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to each of said Territories for defraying the expenses of the said conventions, except to Dakota, for which the sum of forty thousand dollars is so appropriated, twenty thousand dollars each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the Territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be returned into the treasury of the United States.

Sec. 21. That each of said States, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the States, respectively; and the circuit and district courts therefor shall be held at the capital of such State for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the eighth judicial circuit, except Washington and Montana, which shall be attached to the ninth judicial district. There shall be appointed for each of said districts, one district judge, one United States attorney, and one United States marshal. The judge of each of said districts shall receive a yearly salary of three thousand, five hundred dollars payable in four equal installments, on the first days of January, April, July, and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said State; the regular term of said courts shall be held in each district at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for each of said districts, and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and clerks of the circuit and district court of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the state of Nebraska

Sec. 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the supreme court of either of the Territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts may be heard and determined by said Supreme Court of the United States and the mandate of execution or of further proceedings, shall be directed by the Supreme Court of the United States to the circuit or district court hereby established within the State succeeding the Territory from which such record is or may be pending, or to the supreme court of such State, as the nature of the case may require; PROVIDED, That the mandate of execution or of further proceedings shall, in cases arising in the Territory of Dakota, be directed by the Supreme Court of the United States to the circuit or district court of the district of South Dakota, or to the supreme court of the State of South Dakota, or to the circuit or district court of the district of North Dakota, or to the supreme court of the State of North Dakota, or to the supreme court of the Territory of North Dakota, as the nature of the case may require. And each of the circuit, district, and State courts, herein named, shall, respectively, be the successor of the supreme court of the Territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of either of the Territories mentioned in this act, in any case arising within the limits of any of the proposed States prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States as they shall have had by law prior to the admission of said State into the Union.

Sec 23. That in respect to all cases, proceedings, and matters now pending in the supreme or district courts of either of the Territories mentioned in this act at the time of the admission into the Union of either of the States mentioned in this act, and arising within the limits of any such State, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said Territory; and in respect to all other proceedings and matters pending in the supreme or district cases courts of any of the Territories mentioned in this act at the time of the admission of such Territory into the Union, arising within the limits of said proposed State, the courts established by such state shall, respectively, be the successors of said supreme and district Territorial courts; and all the files, records, indictments, and proceedings relating to any such cases, shall be transferred to such circuit, district, and State courts, respectively, and the same shall be proceeded with therein in due course of law, but no writ, action, indictment cause or proceeding now pending, or that prior to the admission of any of the States mentioned in this act, shall be pending in any Territorial court in any of the Territories mentioned in this act, shall abate by the admission of any such State into the Union, but the same shall be transferred and proceeded within the proper United States circuit, district or State court, as the case may be· PROVIDED, HOWEVER, That in all civil actions, causes, and proceedings, in which the United States is not a party, transfer shall not be made to the circuit and district courts of the United States, except upon written request of one of the parties to such action or proceedings filed in the proper court; and in the absence of such request such cases shall be proceeded with in the proper State courts

Sec. 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full State governments including members of the legislatures and Representatives in the Fifty-first Congress, but said State governments shall remain in abeyance until the States shall be admitted into the Union, respectively, as provided in this act In case the constitution of any of said proposed States shall be ratified by the people, but not otherwise, the legislature thereof may assemble. organize, and elect two Senators of the United States, and the governor and secretary of state of such proposed State shall certify the election of the Senators and Representatives in the manner required by law; and when such State is admitted into the Union, the Senators and Representatives shall be entitled to be admitted to seats in Congress, and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States; and the officers of the State governments formed in pursuance of said constitutions, as provided by the constitutional conventions shall proceed to exercise all the functions of such State officers; and all laws in force made by said Territories, at the time of their admission into the Union, shall be in force in said States, except as modified or changed by this act or by the constitutions of the States, respectively.

Sec. 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislatures of said Territories or by Congress, are hereby repealed.

SIGNATURES.

Approved February 22, 1889.

MEMBERS OF THE CONSTITUTIONAL CONVENTION 1889

NAME	BORN	State	Arrived in Montana	Business	Town	Politics
Aiken, E D	July 6, 1838.	Vermont	1864	Foundryman	Butte	Democrat
Browne, D G	January 16, 1859.	Ireland	1878	Contractor	Fort Benton	Democrat
Burleigh, W. A	October 25, 1820.	Maine	1879	Lawyer	Miles City	Republican
Brazleton, J F	May 19, 1858	Tennessee	1884	County Clerk	Deer Lodge	Democrat
Burns, Edward	June 8, 1855	New York	1884	Merchant	Elliston	Democrat
Burns, A J	May 5, 1828.	Ohio	1881	Mining	Marysville	Republican
Burns, A F	December 7, 1832.	Missouri	1866	Farmer	East Helena	Democrat
Buford, S R	March 2, 1846	Missouri	1865	Merchant	Virginia City.	Democrat
Bickford, W. M	February 25, 1852	Maine	1884	Lawyer	Missoula	Democrat
Bullard, W M.	April 23, 1853	Indiana	1880	Doctor	Pony	Republican
Breen, Peter	October 5, 1860	Kansas	1884	Laborer	Wickes	Democrat
Conrad, C E	May 20, 1850.	Virginia	1868	Banking	Fort Benton	Democrat
Collins, T E	November 25, 1843	Ireland	1864	Banking	Great Falls	Democrat
Cooper, Walter	July 4, 1843	New York	1864	Mng. & Real Est	Bozeman	Democrat
Cardwell, Edward	, 1832	Ireland	1863	Stockman	Jefferson	Democrat
Carpenter, B P	May 14, 1837.	New York	1885	Lawyer	Helena	Republican
Chessman, W. A	August 19, 1830.	Massachusetts	1865	Capitalist	Helena	Republican
Craven, A. J.	December 12, 1857	Indiana	1884	Lawyer	Helena	Republican
Cauby, Milton	January 1, 1838	Illinois	1885	Hotel Keeper	East Helena	Republican
Callaway, J E	July 7, 1835	Kentucky	1871	Lawyer	Virginia City	Republican
Courtney, T. F	April 4, 1856	Pennsylvania	1880	Grocer	Butte	Democrat
Durfee, D M	July 22, 1855	New York	1882	Lawyer	Philipsburg	Democrat
Dyer, Wm	February 28, 1853	England	1878	Mining	Butte	Republican
Dixon, W W	June 3, 1838	New York	1866	Lawyer	Butte	Democrat
Eaton, Geo O	May 14, 1848	Maine	1882	Mining	Helena	Republican
Fields, Wm T	August 13, 1859.	Illinois	1882	Loco. Engineer	Livingston	Democrat
Graves, F L	July 19, 1833	Kentucky	1865	Merchant	Bannack	Democrat
Gibson, Paris	July 1, 1830.	Maine	1879	Real Estate	Great Falls	Democrat
Goddard, O. F	January 20, 1853.	Iowa	1883	Lawyer	Billings	Republican
Gillette, W. C.	March 10, 1832	New York	1862	Wool Grower	Dearborn	Republican
Gaylord, J E.	January 14, 1844.	New York	1883	Mining	Butte	Democrat
Haskell, Henri J.	July 20, 1843	Maine	1882	Lawyer	Glendive	Republican
Hobson, S. S.	April 29, 1839	Maine	1880	Stockman	Utica	Republican
Hartman, Chas. S	March 1, 1861	Indiana	1882	Lawyer	Bozeman	Republican
Hammond, R E	September 17, 1859	Kentucky	1887	School Teacher	Elkhorn	Republican
Hershfield, L H.	August 12, 1837	New York	1864	Banking	Helena	Republican
Hickman, R. O	November 1, 1831	Kentucky	1864	Merchant	Virginia City	Republican
Hatch, L. D.	October 3, 1844	Michigan	1876	P M. & Mining	Stevensville	Democrat
Hogan, J	November 24, 1862	Virginia	1883	Mining	Walkerville	Democrat
Joyes, Thomas	February 14, 1858	Kentucky	1885	Lawyer	Boulder	Democrat
Joy, A. R	June 15, 1857	Maine	1883	Lawyer	Livingston	Republican
Knippenberg, H.	December 27, 1843.	Germany	1881	Mining & Banking	Glendale	Republican
Kohrs, Conrad	August 5, 1835	Germany	1862	Stockman	Deer Lodge	Republican
Kanouse, J. E.	December 18, 1845	New Jersey	1886	Lawyer	Townsend	Democrat
Kennedy, W. J.	April 11, 1851	Canada	1880	Clerk Sup. Court	Victor	Republican

NAME	BORN	State	Arrived in Montana	Business	Town	Politics
Knowles, Hiram	January 18, 1834	Maine	1866	Lawyer	Butte	Republican
Loud, C. H.	November 20, 1858	Massachusetts	1880	Stockman	Miles City	Republican
Luce, L. A.	November 11, 1837	Maine	1882	Lawyer	Bozeman	Democrat
Mitchell, Samuel	July 10, 1842	Ireland	1865	Stockman	Choteau	Republican
Middleton, C R.	January 31, 1853	Minnesota	1884	Lawyer	Miles City	Democrat
Myers, Alfred	January 10, 1840	Illinois	1866	Stockman	Billings	Democrat
McAdow, P. W	July 28, 1838	Kentucky	1861	Mining	Maiden	Democrat
Mayger, Wm.	November 24, 1842	Missouri	1864	Mining	Marysville	Democrat
Muth, Wm.	October 2, 1851	Virginia	1873	Real Estate	Helena	Democrat
Maginnis, Martin	October 27, 1841	New York	1866	Mining	Helena	Democrat
Marshall, Chas. S.	January 19, 1821	Kentucky	1888	Lawyer	Missoula	Republican
Marion, J. E.	June 1, 1842	Canada	1861	Merchant	Frenchtown	Democrat
Parberry, Wm	March 12, 1833.	Kentucky	1865	Doctor	W S. Springs	Democrat
Reek, G. J.	March 17, 1856	Wisconsin	1887	Teacher	Granite	Republican
Robinson, J. C.	March 9, 1834	Missouri	1866	Lawyer	Deer Lodge	Democrat
Rotwitt, L.	July 23, 1838.	Germany	1866	Mining	W. S. Springs.	Republican
Ramsdell, W. R.	June 7, 1860	Minnesota	1881	Merchant	Egan	Democrat
Rickard, J E	July 23, 1848	Delaware	1882	Merchant	Butte	Republican
Stapleton, G. W	November 28, 1834	Indiana	1862	Lawyer	Butte	Democrat
Schmidt, Leopold	January 23, 1846	Germany	1870	Brewer	Butte	Independent
Sargent, F. E.	August 2, 1841	Vermont	1865	Mining	Butte	Republican
Toole, J. R.	July 3, 1850	Maine	1884	Mining	Anaconda	Democrat
Toole, Jos. K	May 12, 1851	Missouri	1869	Lawyer	Helena	Democrat
Witter, A. C	June 13, 1849	Indiana	1875	Mining	Dillon	Republican
Webster, Chas. M.	April 12, 1858	Minnesota	1886	Power Co	Great Falls	Republican
Winston, G. B	October 9, 1861	Missouri	1883	Lawyer	Anaconda	Democrat
Whitehill, H. R.	March 26, 1838	Pennsylvania	1881	Lawyer	Deer Lodge	Republican
Watson, W. H	August 31, 1822	New York	1882	Retired	Lewistown	Republican
Warren, Chas. S.	November 20, 1847	Illinois	1866	Mining	Butte	Republican
Mr. President—Clarke, Wm. A	January 8, 1839	Pennsylvania	1863	Mining & Banking	Butte	Democrat

EMPLOYES OF CONVENTION

Wm H Todd.	January 12, 1843	Kentucky	1866	Journalist	Fort Benton	Democrat
Samuel Alexander	June 2, 1859	California	1874	Genl. Collector	Helena	Democrat
Christopher P. Connolly	December 23, 1863	New York	1886	Attorney	Helena	Democrat
H E Clowes				Minister, Episc'p'l	Fort Benton	
Jennie Mae Merriman	October 12, 1868	Montana			Gallatin	
William Leonard Greene	March 9, 1857	Illinois	1882	Clerk	Helena	Democrat
Edward C Garrett	July 28, 1856	Pennsylvania	1856	Journalist	Fort Benton	Democrat
George H. Stanton	March 27, 1867	Indiana	1887	Surveyor	Great Falls	Democrat
John M. Kay	May 21, 1867	Idaho	1868	Teacher	Bozeman	Democrat
W. D. Alexander.	October 22, 1873	Louisiana	1874	School Boy	Bozeman	Democrat
Eugene Dickerson	April 14, 1876	Indiana	1888		Helena	Democrat
Maurice L Langhorne.	November 19, 1875	Montana		Page	Helena	Democrat
Edw. Kern	Nov. 13, 1868	Missouri	1889		Helena	Republican
Lee Swords		Mississippi	1889	Journalism	Helena	Democrat
Cornelius Hedges, Jr.	March 14, 1874	Montana		School Boy	Helena	Republican

PROCEEDINGS

FIRST DAY.

Thursday, July 4, 1889.

The convention was called to order by Mr. L. A. Walker, Secretary of the Territory of Montana, at 12 o'clock noon July 4th, 1889, who spoke as follows:

Gentlemen It is with much pleasure that I call this convention to order, a convention that meets for the purpose of framing a constitution for one of the largest states in the Union, the great gold and silver State of Montana I will now call the list of names as filed in the office of the secretary by the canvassing board, which list constitutes the names of the members who are entitled to seats in this convention. I will call the list according to districts.

Secretary Walker then called the roll of members by districts, and those present answered to their names as called

Secretary Walker There being a quorum present, I am now ready for any motion that the convention may see fit to put.

Mr. Bickford of Missoula: For the purpose of forming a temporary organization, and in order that business may be facilitated, I will place in nomination as temporary chairman of this convention Hon. Joseph K. Toole of Helena.

Secretary Walker· Mr. Toole's name has been placed in nomination for temporary chairman or president.

Mr. W. A. Clark of Silver Bow: The gentleman who has just been nominated for the position of chairman of this convention is eminently and thoroughly qualified, as every one present knows, for that position. He has been a loyal and faithful servant of the Territory of Montana and, next to Mr. Springer, the father of that bill, has done more than any other man in the house of representatives to secure the passage of the bill by which we are enabled now to throw off the territorial government and assume that of statehood; and as a testimonial to this gentleman and a deserving compliment for his constant fidelity to Montana. I take pleasure in seconding the nomination made by the gentleman from Missoula.

Mr. Joy of Livingston: Mr Chairman, in view of the fact that we have met here to transact business of vast and far-reaching importance to all the people of this Territory, it is very necessary that we place in nomination at this time a man as temporary chairman who is acquainted as far as may be with all the various interests of this Territory. I desire to place in nomination as temporary chairman a man who is familiar with the various resources of our Territory, a man who is essentially a mining man—a man who comes from an agricultural country, a man who is familiar with the stock interests and comes from a stock section as well of our country, a man who is a thorough parliamentarian, who has had a great deal of experience in such bodies—a man who will fulfill the duties of that office with credit to himself, to this body, and to the people of Montana. He needs no further introduction from me. I will nominate Hon. George O. Eaton of Park County.

Mr. Burleigh of Custer· Mr. Chairman, for the purpose of seconding the nomination, I rise to endorse the sentiments expressed by the gentleman from Park.

The presiding officer: George O Eaton's name has been placed in nomination.

Mr. Kennedy of Missoula County: I take pleasure in seconding the nomination of Hon. George O Eaton as chairman of this convention.

Mr. Goddard of Yellowstone: I rise. representing Yellowstone County, one of the eastern counties of Montana, to second the nomination of George O. Eaton for temporary chairman of this organization. In doing so I heartily endorse all that has been said by the gentleman from Park (Mr. Joy) and Mr. Burleigh, and the gentleman from Missoula County.

Mr. Hershfield of Lewis & Clark: I also, Mr. Secretary, take great pleasure in seconding the nomination of Mr. Eaton as temporary chairman of this convention, and I trust there will be some democratic members who will see the propriety of selecting him for that position.

Mr. Middleton of Custer: I don't know of anything that has occurred in my life-time that affords me so much pleasure as to be in a position as a representative from Custer County, a delegate from the eastern part of this Territory, than to rise here and second the nomination of Hon Joseph K. Toole.

Mr. Goddard of Yellowstone: I move the nominations be closed.

Mr. Chessman of Lewis & Clark: I second the motion.

The presiding officer: It is moved and seconded that the nominations be now closed. Those in favor of the motion will signify the same by saying aye; those opposed, no. (A pause.) The ayes have it, and the nominations are now closed. The convention will now proceed to elect a temporary chairman.

The convention then proceeded to the election of the temporary chairman by ballot.

The Tellers announced that there had been 67 ballots cast, of which Joseph K. Toole had received 36.

Mr. Eaton of Park: Mr. Chairman, I move you, sir, that the election of the Hon. Joseph K. Toole be made unanimous.

Mr. Hershfield of Lewis & Clark: Mr. Chairman, I second the motion of the gentleman from Park, and nothing affords me greater pleasure in my own political experience than to second the nomination of Mr. Toole, a townsman of mine who has grown up under my own observation, as a man fit for the position with which this convention has honored him.

The presiding officer: Gentlemen of the Convention, it has been moved and seconded that the election of the Hon. Joseph K. Toole as temporary President of this Convention be made unanimous. Are you ready for the question?

The question was then put and carried.

The presiding officer: The ayes have it, and the Hon. Joseph K. Toole is elected temporary President of this Convention. I will appoint Mr. Collins of Choteau and Mr. Hickman of Madison to escort Mr. Toole to the Chair.

Mr. Toole then took the Chair and addressed the Convention as follows:
Gentlemen of the Convention:

I am profoundly grateful for this evidence of your confidence and esteem. I consider it no slight honor to be chosen to preside over the temporary organization of this important body. It is the largest deliberative assembly ever convened in this Territory. Certainly none ever met charged with higher duties or graver responsibilities. As I look this Convention over and see all of our actions clothed with the authority of an act of congress, I begin to realize how near we are to the threshold of statehood. Looking out into the splendid procession which lines the streets with flying banners and gilded streamers, the memory of other days comes back in strange contrast with the present. The occasion invites only a glance at the panorama of the past.

In the stretch of a quarter of a century we behold the birth of this territory. Scattered here and there were a few intrepid spirits, poorly housed and still more poorly clad and fed, in pursuit of fortunes. The population represented the best and worst elements of society. Malefactors and law breakers were holding high carnival. With them honor was a jest and virtue a fable. Law and order were "more honored in the breach than in the observance." Interesting as it might be, time does not permit to recount the dangers through which the pioneers passed, nor the trials and sufferings entailed upon them by a residence in such a climate and under such circumstances.

It is enough to know that they overcame every difficulty and surmounted every obstacle. In all their laudable ambitions they finally triumphed. All along the line will be found the record of an honorable career. For twenty years I have been a close observer of men and affairs in this Territory. During that time I have noted with pride the increase of our intelligence, the advancement of our civilization, the development of our resources, the augmentation of our wealth, the stimulation of our ambitions, and the realization of many of our best hopes, until to-day I behold here assembled the representatives of a people, who by every rule of virtue, education, property, patriotism and industry, are filling to the fullest measure every requirement of citizenship.

Twenty-five years have wrought these and many other changes. They might have been longer delayed under different circumstances. It was fortunate for us that among the brave and adventurous spirits who subdued the plains and conquered the mountains in order that they might lay here broad and deep the foundations of a great commonwealth, there were not a few men of high character, sound integrity and rare ability. They formed the nucleus around which matured and prospered the brave men and beautiful women of these matchless mountains. They inhabited what was then a remote land. I fain can hear the glad acclaim that went up when the news, so long delayed by the method of its coming, finally reached them, that Montana on the 26th day of May, 1864, had been organized as a Territory, and that the law, although traveling with a leaden heel, was soon to be securely enthroned in their midst. The view of our career as a people of our unexampled progress and prosperity, the hardships endured, and the ultimate success attained thereby, ought ever to be to us an inspiring memory.

Before another six months shall have rolled round, our territorial garments will be cast aside, a new state will be born and spring full-fledged into the family of the Union, and on her shining brow will be seen in golden and silver light the coat of arms of the State of Montana, and there will be inaugurated a new festal day for us, which, let us hope, we may cherish and perpetuate with no less interest and enthusiasm than that which seems to animate the great throng within our hearing in this celebration of the natal day of our nation. (Applause.)

And finally, gentlemen of the Convention, when our labors shall have been concluded, and the time shall come when we are called upon to put aside our swaddling clothes and don more fitting raiment, may the territory which we shall have nurtured into statehood, lay down the scepter obedient to the constitution and the laws without the shadow of repudiation having tainted its good credit or the stain of dishonor having marred its bright escutcheon. For this high honor, again I thank you.

Mr. Clark of Silver Bow. Mr. Chairman, I move you, sir, that Mr. W. H. Todd of Choteau County be placed in nomination for temporary Chief Clerk of this constitutional Convention.

Mr. J. R. Toole of Deer Lodge: Mr. Chairman, I second the motion of the gentleman from Silver Bow.

The Chairman: It is moved and seconded that William H. Todd be placed in nomination as temporary Chief Clerk of this Convention. Are there any other nominations? Is the Convention ready for the question?

The question was then put and carried.

The Chairman: The motion prevails, and Mr. Todd is declared elected temporary Chief Clerk of this Convention.

The Chairman: What is the further pleasure of the Convention

Mr. Bickford of Missoula: Mr. Chairman, I move the nomination of Mr. Samuel Alexander as Sergeant at Arms of this Convention.

The nomination was seconded.

The question was put and carried

The Chairman: The motion prevails and Mr. Alexander is elected temporary Sergeant at Arms of this Convention. What is the further pleasure of this convention?

Mr. Middleton of Custer: Mr. Chairman, in view of the fact that there are exercises going on outside that many of us would like to listen to and observe, I move that this Convention do now adjourn until 12 o'clock to-morrow.

Mr. Collins of Cascade: Mr. Chairman, it seems to me that we cannot adjourn until we are sworn in, and as the motion of the gentleman from Custer was not seconded, I move that the Chair appoint a Committee of five to wait on the Chief Justice of the Territory, and ask him to swear in the members of the convention.

Motion was duly seconded.

The Chairman: It is moved and seconded that the Chair appoint a committee of five to wait upon the Chief Justice of the Territory, and ask him to deliver the oath of office to the members of the Convention.

The motion was then put and carried.

The Chair then appointed as members of such committee Messrs. Collins of Cascade, Burleigh of Custer, Hershfield of Lewis & Clark, Luce of Gallatin, and Parberry of Meagher.

Chief Justice Blake then appeared within the bar of the house and administered the oath to the members present.

Mr. Luce of Gallatin: Mr. President, I think, sir, it is important that a temporary stenographer be elected at this time to keep the records of the Convention, and I therefore name as such stenographer, Mr. C. P. Connolly.

The nomination was duly seconded.

The Chairman: Mr. C. P. Connolly is placed in nomination as temporary stenographer. Are there any further nominations? If there be no further nominations, all those in favor of the nomination will say aye, those opposed, no.

The motion prevails, and Mr. Connolly is elected as temporary stenographer of the Convention.

Mr. Clark of Silver Bow: Mr. Chairman, I move you, sir, that the gentlemen of the press of this Territory be entitled and invited to the privileges of the floor of this Convention.

The motion was duly seconded.

The Chairman: It is moved and seconded that the members of the press of the Territory be invited to accept the privileges of the floor of the Convention.

The motion was then put and carried.

The Chairman. What is the further pleasure of the Convention?

Mr. Luce of Gallatin: I move that when we adjourn, we adjourn until to-morrow at 12 o'clock.

The motion was duly seconded.

The Chairman: It is moved and seconded that when this Convention adjourns, it adjourn to meet to-morrow at 12 o'clock.

Mr. Hickman of Madison: I move to amend the motion by making the hour 10 o'clock, instead of 12 o'clock.

The amendment was duly seconded.

The Chairman: It is moved and seconded that when the Convention adjourn, it adjourn to meet to-morrow at 12 o'clock, and the motion is made to amend by striking out 12 o'clock and inserting 10 o'clock. The question is upon the amendment.

The amendment was then put and lost by a vote of 26 in the affirmative and 29 in the negative.

Mr. Hershfield of Lewis & Clark: I move to amend the original motion by making the hour 1 o'clock instead of 12.

Amendment duly seconded.

The Chairman: It is moved and seconded that the original motion be amended by changing the hour from 12 to 1 o'clock. Are you ready for the question?

The amendment was then put and carried.

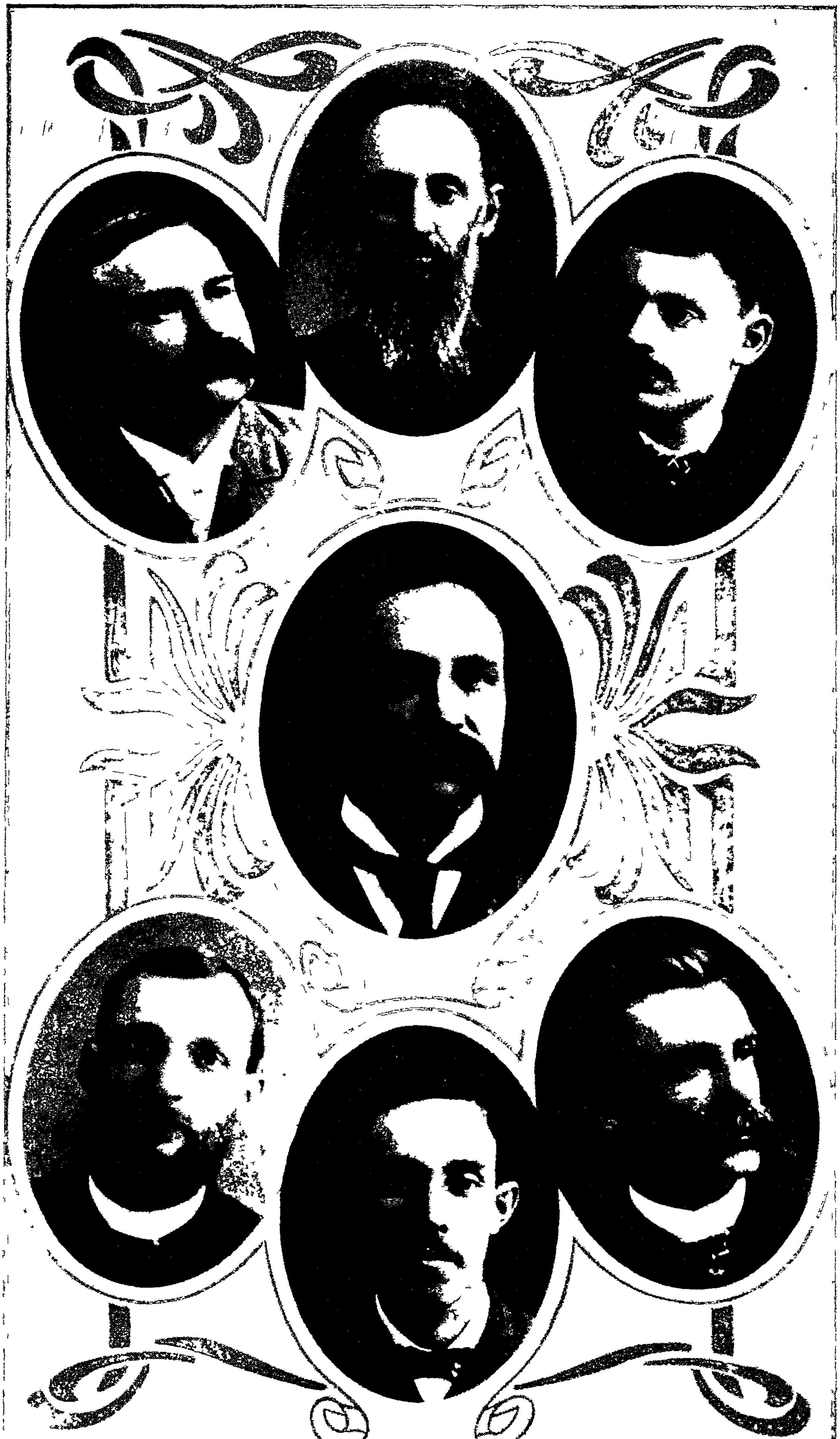
Mr. Collins of Cascade: Mr. Chairman, I would suggest that to expedite matters a committee of credentials be appointed at this session. The record ought to show that some committee, or the Convention itself, has passed upon the credentials of the members.

The motion was duly seconded.

The chairman stated the motion.

Mr. Hickman of Madison: I scarcely think it is necessary to appoint a committee on credentials. The official count has been made here by the secretary and governor, and the official list presented here, and I hardly think it is worth while asking for the credentials, when they have already been certified to by these officers as the members who have been elected. I hardly see the necessity for it.

Mr. Middleton of Custer: It seems to me that it is entirely unnecessary that there should be a committee on credentials. The very act under which the delegates were elected and authorized to assemble here provides that the secretary of the Territory should be the person to issue to the persons elected their certificates of election. That has been done. The secretary himself, in person, has assembled this convention, called it to order and



FIELDING L GRAVES
CHARLES E CONRAD JOSEPH HOGAN
JOSEPH K TOOLE
WILLIAM J KENNEDY CHARLES H. LOUD
GEORGE B WINSTON

called those names. Those persons who were present whose names were called have been sworn, and it seems to me that the matter of a committee on credentials is entirely unnecessary.

Mr. Callaway of Madison It might be right for me to say in addition to what the gentleman from Custer has stated here, that there is no contest here, there is no disagreement or protest by anybody, or anything of that kind, and it would seem to me wholly unnecessary, at this stage of the proceedings, that a committee on credentials should be appointed. The officer duly authorized and appointed by the act of congress has certified the credentials of the members of this body, and has also certified that those who have responded to the roll call of the clerk here were entitled to seats as members of this body.

Mr. Knowles of Silver Bow Mr. Chairman, I will second the motion, as I understand a deliberate body of this kind is the judge of who are its members No one else is authorized to judge of the qualifications of its members. While the secretary may know who are the members of the constitutional Convention from the official records in his office, what does this Convention know about it That is the question. It is not what the secretary knows; but it is what this convention knows; and in my judgment this Convention should have a committee and receive the credentials of the members of the Convention and make a report, and it should be determined who they are and they should be enrolled as such.

Mr. Rickards of Silver Bow: I would like to ask in the event of this committee being appointed, what credentials do we present to that committee? The secretary has already certified to those who are elected to this body and I presume—I have, I suppose we all have, from the secretary or County Clerk of our respective Counties a letter of credentials. Now this committee on credentials, which credentials are they to pass judgment upon, the credential of the secretary or the credential of the County Clerk, which of these two is the essential?

Mr Carpenter of Lewis & Clark: Mr. Chairman, it seems to me unnecessary to appoint a committee on credentials The names of the delegates elected have been taken, and they have taken the oath. They are, presumably, at least, members Now in all bodies of this kind, it has been the custom to appoint among the standing committees a committee on privileges and election, and if there should be at any time a dispute as to the right of any person to his seat, that case would be referred to that committee, and be reported upon in the customary way for the transaction of business by such a body. Therefore it seems to me entirely unnecessary to appoint a committee; that nothing would be gained by it; and that if there were a disputed seat, the committee on privileges and election would be the committee to pass upon it first and the Convention afterwards.

Mr. Burleigh of Custer: It seems to me, Mr. Chairman, that there has been no notice of contest, that there is nothing for a committee to act upon. The Convention is not here to raise any questions. The list of members has been furnished by the secretary who called the Convention to order, the names have been duly recorded, the roll has been called and the members have responded to it and have taken their oath of office, and it seems to me that it would be a work of supererogation to appoint a committee on credentials here when there is nothing for it to do.

Mr. Knowles of Silver Bow The gentlemen do not seem to meet the point that I raised on this question, and that is this: We are a Convention here selected from the people of Montana Territory to form a constitution and have been elected in pursuance of law, and we are the ones to judge who are the members of this Convention, and the very thing that the gentlemen assert here, that we could have a committee upon elections, and that that committee should determine who is elected to this Convention, if there was any contest, shows that this Convention is the judge of who are the officers of the Convention and who are the members elected to the Convention, and it seems to me entirely proper that we should have a committee of that kind.

Mr. Luce of Gallatin I noticed upon the reading of the call that several names had to be corrected. Now, that is one point in favor of this committee; and another point is, that this list which has been brought here is not under the great seal of the Territory of Montana. The badge of our right to sit in this Convention is, it strikes me, the certificate of the governor with the great seal of the Territory attached, and if that be presented here, then this Convention will know the names of every member of this

Convention and we will take notice ourselves of who are the members of this Convention. It strikes me that this is a preliminary matter, simply calling the roll, and in that mistakes may be made; but the certificate bearing the seal of the governor and the secretary of the Territory bears upon its face the verity of the fact that we are elected and entitled to seats in this body, and I do not think that list is any such evidence, and I do not think that it should be received here. I don't think we can make ourselves any too solid in this Convention, and this committee will inconvenience us but little.

Mr. Burleigh of Custer (The gentleman attempted to speak, but could not be heard, on account of the noise and the band out-doors.)

The Chairman: The Chair is unable to hear the remarks of the gentleman from Custer.

The Chairman: The question is upon the motion of the gentleman from Cascade (Mr Collins), that the Chair appoint a committee on credentials; the number of that committee was not suggested at the time——(Interrupted).

Mr. Collins of Cascade: Committee of seven.

The Chairman: That a committee of credentials consisting of seven members be appointed. Are you ready for the question? (The question was then stated.)

Mr. Bickford of Missoula: Will the chairman please repeat the question?

The Chairman repeated the motion.

The Chairman: The Chair is in doubt; those who are in favor of the motion will please rise.

The Chairman: Twelve gentlemen vote in the affirmative; those opposed will rise. Evidently there is a majority, and the motion is lost.

Mr. Eaton of Park: Mr. Chairman, I move you, sir, that this Convention now adjourn.

The motion was duly seconded.

The Chairman: It is moved and seconded that the Convention do now adjourn. As many as are in favor will say aye, those opposed, no. The motion is carried and this Convention is now adjourned

Convention adjourned until 1 o'clock P. M. the 5th day of July, A. D. 1889.

SECOND DAY.

Friday, July 5, 1889.

The Hon. Joseph K. Toole, of Lewis & Clarke, temporary President, in the Chair.

Convention called to order at 1:25 P. M.

The President: The Chair has been informed that there are a number of members of this Convention present who were not here yesterday. The Chief Justice of the Territory is present and will now administer the oath of office to such of those as were not here at that time, if they will come forward.

Mr. Courtney of Silver Bow, and Mr. Hammond of Jefferson then came forward and were sworn in by the Hon. Chief Justice Blake.

The President: The Chair will lay before the Convention for its information the following telegrams which were received this morning.

Mr. Rickards of Silver Bow: Before we proceed to business, believing, as I do, that it is eminently proper and right, and because it is proper and right, I think we ought to commence these proceedings by calling upon some ministerial gentleman present to open the exercises with prayer; and I move you, that the chair invite some ministerial gentleman who may be present to open the exercises with prayer.

The motion was duly seconded.

The Chairman: It is moved and seconded that the chair invite some minister present to open these exercises with prayer. As many as are in favor of the motion will say Aye.

The ayes have it, and the chair will be happy to invite any minister present to open these proceedings with prayer.

Mr. Eaton of Park: I would suggest that Rev. George C. Stull is present, and ask that he be invited to offer prayer.

The Chairman: The invitation of the Convention is extended to Rev. Mr. Stull, and he is invited to open these exercises with prayer.

Rev. Mr. Stull then offered prayer.

The Chairman: The Clerk will now read, for the information of the Convention, certain telegrams which have been received.

The Clerk then read the following telegrams:

"Sioux Falls, Dakota, July 4, 1889.

"President of the Constitutional Convention·

"South Dakota Constitutional Convention sends its greeting to Montana Constitutional Convention.

"(Signed) A. J. EDGERTON, President."

"Olympia, W. T., July 4, 1889.

"Chairman of the Constitutional Convention:

"Washington congratulates Montana on approaching statehood, and predicts that the stars of the new states will rise high and be resplendent in the firmament, and that their honorable fame will grow with the centuries.

"(Signed) J. J. MOORE, President."

"Bismarck, Dakota, July 4, 1889.

"Constitutional Convention:

"The Constitutional Convention of North Dakota sends greeting, and bids you God-speed in your advance movement towards statehood and full American citizenship. May the four new stars about to be added to the national flag not lose in brilliancy through lack of care in laying the foundations of the states to be. Let Washington bring fruit and flowers—Montana, its precious metals—to add to the beauty and wealth of our nation; while the Dakotas will bring wheat and corn for the people of the world.

"(Signed) F. B. FANCHER, President."

The Chair: What is the pleasure of the Convention?

Mr Maginnis of Lewis & Clark: I move you, Mr. Chairman, that we accept the telegrams with our profound thanks and heartiest sympathies, and that the Chairman of this Convention, on behalf of the Convention, be authorized to return our thanks and to return like congratulations to our sister territories.

The motion was duly seconded.

The Chairman then put the motion as stated, and the same was duly carried.

The Chairman: What is the further pleasure of the Convention?

Mr. Dixon of Silver Bow: I move you, Mr. Chairman, that the Convention proceed to the election of permanent officers.

Mr. Eaton of Park: I only wish to suggest, Mr. Chairman, not with a sense of taking the floor, but with the gentleman's permission, that I think it would be proper to call the roll of this Convention.

The Chairman: The Clerk will call the roll.

The Clerk then called the roll.

The Chairman: The motion is that the Convention do now proceed to the election of permanent officers. Is there a second to the motion?

The motion was duly seconded.

The Chair then put the motion as stated, and the same was duly carried.

The Chairman: Nominations are now in order.

Mr. Eaton of Park: Mr. Chairman, before nominations are made of any of the officers, would it not be proper for the Convention to determine just what offices are to be filled? It seems to me that that would be better. It is a question we will have to meet and solve sometime, and, perhaps, just as well now as any time.

Mr. Maginnis of Lewis & Clark: Mr. Chairman, I would suggest that the law determines that, in the first instance and as soon as our permanent organization is effected, we will then, by resolution, have to provide for such officers as we shall certainly need in addition to those provided for.

The Chair: On the suggestion of the member from Lewis & Clark (Mr. Magginnis), the chair would state that the law under which we are essembled defines such officers as we shall have. Nominations for permanent officers are now in order.

Mr. Myers of Yellowstone: Mr. President, and Gentlemen of the Convention: I rise to place before this Convention the name of Hon W. A. Clark, of Silver Bow County Anything that I can say in commendation of Mr. Clark I feel would be unnecessary, as the gentlemen of the Convention, and indeed every one present, are aware of his worth, his energy and his eminent fitness for the place for which I name him; and what I desire to say is simply to bear testimony to his worth and eminent fitness for the position. Mr. Clark is a gentleman who has been prominently identified, and is prominently identified, with almost every interest in the Territory. He is a gentleman that has served the people of this Territory in many capacities, and one--I will only refer to one at the present time--and that is as President of the Convention that assembled here four years ago and formed a state constitution to abide admission into the Union. Mr. Clark was the presiding officer of that Convention; he went to the trouble and expense of presenting that constitution to the proper authorities at Washington, asking for the admission of Montana at that time as a state; and I venture to say, gentlemen, that there is not a man within the confines of Montana Territory that has done more to forward and hasten statehood than the Hon. W. A. Clark of Silver Bow County.

The Chairman: Hon. W. A. Clark, of Silver Bow, is placed in nomination. Are there any other nominations?

Mr. Eaton of Park: In making a nomination for the position of permanent Chairman, I am actuated by the knowledge that my candidate, in his life and history—known to all men—needs no eulogy at my hands. His life and his history is the life, or a part, at least—a prominent part—of the life and history of the Territory of Montana from its inception; and without further commendation I desire to present the name of the Hon. L. H. Hershfield.

The Chairman: The Hon. L. H. Hershfield, of Lewis & Clark County, is placed in nomination. Are there any other nominations?

Mr. Hickman of Madison: As a member of the County of Madison I desire to say that this delegation takes pleasure in seconding the nomination of Mr. L. H. Hershfield.

The Chairman: Are there any further nominations?

Mr. Middleton of Custer: Mr. President, I rise to second the nomination of the Hon. W. A. Clark as President of this Convention, and in doing so, I want to remark that no words from me could indicate to this Convention—who are as well, if not better, each and every man, acquainted with Mr. Clark than I am---his qualifications and fitness for that honorable position.

The Chairman: Is the Convention ready to cast their ballots?

Mr. Bickford of Missoula: I move you, Mr. Chairman, that we proceed to ballot.

Mr. Maginnis of Lewis and Clarke: Mr. Chairman, I move you that we call the roll, and that each gentleman respond.

The Chairman: If there be no objection the Clerk will proceed to call the roll, and the members will come forward and deposit their ballots.

Mr. Eaton of Park: How is this, vive voca or ballot?

Mr. Joy of Park. I move you, Mr. Chairman, that we proceed to vote by ballot as we did yesterday, for the candidate of our choice

The motion was duly seconded

The Chairman put the motion Division was called for.

The Chairman: As many as are in favor of the amendment will rise until they are counted. The gentleman from Lewis & Clark (Mr. Maginnis) moved that the Clerk proceed to call the names of the members of the Convention, and upon the calling of the names that the members announce their preference The gentleman from Park (Mr. Eaton) moves to amend, by voting by ballot as the names of the members are called—that they approach the Clerk's desk and deposit their ballots. The question now is on the amendment of the gentleman from Park to proceed to vote by ballot.

The Convention then voted on the amendment. The vote resulted in thirty-nine votes in the affirmative, the votes in the negative not being counted.

The Chairman: The motion prevails; and as the names of the members are called they will approach the Clerk's desk and deposit their ballots.

The Chair then appointed as Tellers Messrs, Aiken and Rickards of Silver Bow.

The Chairman: Gentlemen of the Convention, the Tellers report as follows:

Seventy-seven votes have been cast, of which—

The Hon. W. A. Clark receives 39.

The Hon. L. H. Hershfield receives 32.

The Hon. George O. Eaton receives 1.

The Hon. Martin Maginnis receives 1.

By your votes you have elected Hon. W. A. Clark President of this Convention.

The Chair then appointed the Hon Martin Maginnis, of Lewis & Clark, and Dr. Parberry, of Meagher, to notify the Hon. W. A. Clark of his election as President of the Convention, and to escort him to the Chair.

The Chairman: Gentlemen of the Convention, I have the honor and pleasure of introducing to you the Hon. W. A. Clark.

The President then took the Chair and addressed the Convention as follows:

Gentlemen of the Convention: I am deeply moved, and grateful beyond expression, for this manifestation of your confidence and respect. I fully realize that to be chosen the presiding officer of a Convention in which there are so many distinguished representatives of the people of Montana, and which has for its purpose the framing of an organic law for the future government of the state, is a rare and distinctive honor, of which any man may justly be proud. I am not unmindful of the grave responsibilities and difficulties incident to the position, and I accept it, relying confidently upon your indulgence and co-operation. We have reached an eventful era in the history of our country. Montana, whose origin in the wildest regions of the west over a quarter of a century ago some of you have witnessed, has, notwithstanding the disadvantages and embarrassments that attend a territorial form of government, experienced a phenomenal development, and stands to-day without a peer among the territories, the gem and the pride of the northwest. She is now about to put off the garb of territorial existence and assume the dignity of statehood, and the work of this transition is confined to our hands. While we may well congratulate ourselves upon the honor that has been conferred upon us, we should be admonished that there are likewise most solemn and important duties imposed upon us. We are to build a structure that shall exist through the ages to come, that shall exert an influence for good or evil upon the destinies of generations yet unborn. It is a work which commends itself to our most serious consideration, a work which challenges the exercise of our best and noblest faculties—a work to which we should bend our best energies, and to which we should subordinate every selfish, personal and partisan consideration, to the end that we may present a constitution that shall be worthy of the State; that shall be acceptable to the people, and that will enable Montana to embrace the golden opportunity now first presented, and which, if neglected, may long be deferred, to take the proud position to which she is entitled in the great sisterhood of states. I thank you, gentlemen, for the honor you have conferred upon me

Mr. Collins of Cascade: Mr. President, in the matter of the election of permanent officers, I offer the following resolution:

The Resolution was sent up to the President's desk, and read by the Clerk, as follows.

Resolved, That the following named subordinate officers be elected by the Convention:

Chief Clerk	W. H. Todd
Engrossing and Enrolling Clerk	G. H Stanton
Sargeant-at-Arms	Samuel Alexander
Messenger	Eugene Dickenson
Chaplain	H E Clowes
Watchman	J. M. Kay

Mr. Collins of Cascade: Mr President, I move the adoption of the resolution.

The motion was duly seconded.

Mr. Warren of Silver Bow. Mr. President, I move the adoption of the following substitute:

The substitute was sent to the President's desk, and read by the Clerk, as follows.

Resolved, That the following named persons be declared elected subordinate officers of this Convention:

Chief Clerk	James B Wells
Enrolling and Engrossing Clerk	John R. Eddy
Sergeant-at-Arms	Capt. L. F. Wyman
Watchman	George Lee
Page	Cornelius Hedges, Jr.
Chaplain	Rev. R. E. Smith

The substitute of the gentleman from Silver Bow was duly seconded.

The President: Gentlemen, the question is upon the substitute offered by the gentleman from Silver Bow. Are you ready for the question?

The President then put the question, and a division was called for, which resulted as follows: Ayes, 33; noes, 38.

The President: The amendment offered by the gentleman from Silver Bow is lost; the question now is upon the original resolution. Are you ready for the question?

Mr. Craven of Lewis & Clark: I move you, sir, as an amendment to this resolution, that the officers for the different places named in the resolution be elected separately, and in the order named, and not consecutively.

Mr. Maginnis of Lewis & Clark: I rise to the point of order, Mr. President, that the gentleman is not in order; that the question has already been submitted and a vote taken on the division.

Mr. Craven of Lewis & Clark: I understand, Mr. President, that we have taken a vote upon the amendment offered, and that the original resolution has not come forward; and until that time, other amendments will be in order.

The President: The Chair sustains the gentleman from Lewis & Clark (Mr. Craven).

The President: The genthleman from Lewis & Clark offers an amendment—that the officers of this Convention be elected separately and by ballot.

Mr. Toole of Lewis and Clark: I call for the ayes and noes upon the amendment.

The vote was then taken, which resulted as follows: Ayes, 35; noes, 35.

The President: The amendment of the gentleman from Lewis & Clark (Mr. Craven) is lost. The motion now is that the names in the resolution submitted by the gentleman from Cascade shall be declared elected.

The President then put the motion, and the same was duly carried.

The Chair then stated that the Hon. Henry N. Blake, Chief Justice of the Territory, was ready to administer the oath of office to the officers elected.

The said officers appeared at the bar of the House, and were duly sworn in by the Chief Justice.

Mr. Dixon of Silver Bow: Mr. President, I desire to offer a resolution.

The resolution was sent to the Clerk's desk.

The President: The resolution offered by the gentleman from Silver Bow will now be read.

The Clerk then read the resolution, as follows:

"Resolved, That the delegates in this Convention assembled do declare, on behalf of the people of the proposed State of Montana, that we adopt the Constitution of the United States."

The motion was duly seconded by Mr. Toole of Lewis & Clark.

Mr. Dixon of Silver Bow: I desire to explain to the Convention, with reference to this resolution, that, under the Act of Congress under which we are assembled, there is a provision that the delegates elected and assembled in the Convention shall declare, on behalf of the people of the Territory, that they adopt the Constitution of the United States, and thereupon shall proceed to form a state constitution. I desire to read here the two lines in the fourth section of the Act in relation to the subject. (The gentleman read the part of the Act referred to.) This, it would seem to me, under this law, is a pre-requisite to proceeding to the formation of the constitution. Of course it is the desire of the whole Convention to comply as strictly as possible with the provisions of this Act, and with that end in view I offer this resolution, and move its adoption before any other proceedings are had.

The President: The question is upon the resolution offered by the gentleman from Silver Bow.

The Chair then stated the question, and the motion was duly carried.

Mr. Maginnis of Lewis & Clark: Mr. President, would it not be necessary to make a record upon this question?

Mr. Hickman of Madison: I move that the ayes and noes be called, so that there can be a record of the vote.

The Clerk then called the roll. All of the members present, without exception, voted in favor of the resolution.

Mr. Dixon of Silver Bow: Mr. President, I desire to offer another resolution.

The resolution was sent to the President's desk, and read by the Clerk, as follows:

"Resolved, By this Convention, that permanent seats be assigned to the members in the following manner: Slips of paper, numbered consecutively from 1 to 25, inclusive, to correspond with the number of districts represented, shall be prepared by the Clerk and mixed together in a hat. The Sergeant-at-Arms shall draw the slips from the hat one at a time, and the members of the districts whose number corresponds with the number on the slip first drawn shall have the first choice of seats. The members of the district whose number is next drawn shall have the second choice; and so on, until all the numbers are drawn from the hat. Members of a district may select seats adjoining or separate, as they prefer. If any member of the district is not present at the drawing, his associates from that district may select his seat."

Mr. Dixon of Silver Bow: I move the adoption of the resolution.

The motion was duly seconded.

The President stated the motion.

Mr. Carpenter of Lewis & Clark: Mr. President, there is one suggestion I would like to make. Under the resolution, as I understand it, the members will all be occupying their seats I move to amend, that when the drawing commences, the members retire beyond the bar of the House. and when the names are drawn, select their seats and keep them until the drawing is concluded, under penalty of forfeiture if vacated

The amendment was duly seconded.

Mr. Dixon of Silver Bow: I accept the amendment.

Mr Collins of Cascade: I move than an exception be made to this resolution, and that Mr. McAdow of Fergus, Mr. Rickards of Silver Bow, and Mr. Parberry of Meagher, and also the President, be entitled to choose their seats.

The amendment was duly seconded.

Mr. Dixon of Silver Bow: I said nothing about that in the resolution, as I looked upon that as a matter of courtesy upon which there was no necessity of a resolution.

Mr. Stapleton of Silver Bow: I would suggest the name of Mr. Robinson.

Mr. Collins of Cascade also suggested the name of Mr. Brown of Choteau.

Mr. Knowles of Silver Bow also suggested the name of Mr. Marshall.

Mr. Eaton of Park also suggested the name of Mr. Burleigh, and Mr. Burleigh thereupon declined the courtesy.

Mr. President: All the amendments to the original resolution have been accepted excepting the gentlemen from Silver Bow, from Meagher, from Fergus, from Missoula, from Choteau, and from Deer Lodge out of the number of those who shall select their seats by lot The question now is upon the original motion as amended. Are you ready for the question?

The President then stated the question and the same was duly carried.

The Clerk then proceeded to the drawing of the seats by lot, and the members took their seats according to the order of the choice drawn by the Sergeant-at-Arms.

Mr. Toole of Lewis and Clark. Mr President, I offer the following resolution:

(Resolution sent up.)

The President: The resolution offered by the gentleman from Lewis & Clark will now be read by the Clerk.

The Clerk read the resolution, as follows:

"Resolved, That a committee of eleven be appointed on rules and order of business, and that pending the adoption of permanent rules, that the rules of the Montana Constitutional Convention of 1884 be adopted for the temporary government of this convention."

Mr. Toole of Lewis & Clark: I move the adoption of the resolution.

Motion was duly seconded.

The President then stated the motion, and the same was duly carried.

The Persident: I will name as the members of that committee, Messrs. J. K. Toole, Eaton, Cooper, Robinson, Carpenter, Knowles, Callaway, Middleton, Bickford, Warren and J. R. Toole.

What is the further pleasure of the Convention?

Mr. Bickford of Missoula: I desire to offer a resolution.

Mr. President: The resolution offered by the gentleman from Missoula will now be read.

Clerk read resolution, as follows:

"Resolved, That it be the sense of this Convention that for the purpose of expediting the work thereof, there be employed in addition to the employes allowed by law, one official stenographer, one chief clerk, five additional clerks, who shall be assigned to such duties as may be found most expedient; three pages to assist the messenger in the performance of his duties, and one assistant sergeant-at-arms. That such employes shall receive such compensation as may be provided by resolution of this Convention."

Mr. Bickford of Missoula: I move the adoption of the resolution.

The motion was duly seconded.

The President stated the motion and the same was duly carried.

The President: The Chair would suggest that there be a committee appointed for the distribution of the work of this Convention.

Mr. Maginnis of Lewis & Clark: Does not that come under the jurisdiction of the rules on order of business?

The President: It is a matter that requires considerable thought and care, and in order to distribute this work properly, the Chair is of the opinion that a separate committee should be appointed for that purpose.

Mr. Loud of Custer offered the following resolution, which was read by the Clerk:

"Resolved, That a committee to consist of one member from each district be appointed to report to this Convention upon the best mode of proceeding, and including such committees as in its judgment shall be necessary."

Mr. Maginnis of Lewis & Clark: I would ask the gentleman offering the resolution if that is not already covered by the resolution concerning the committee on rules and procedure which has just been adopted?

Mr. Collins of Cascade: I would like to have the resolution passed a moment ago re-read; I think it covers both the order of business and the rules.

Clerk re-read the resolution.

Mr. Loud of Custer: I would ask that the other resolution be now read.

Clerk then read the resolution offered by the gentleman from Custer.

Mr. Toole of Lewis and Clark: I think it was the contemplation, Mr. Chairman, that the committee on rules should be charged with that responsibility. They seem to follow the rules of the old Convention and they provide for the order of business, committees, etc. Of course I defer to the judgment of the Convention with reference to it; but I anticipated that at the time of the introduction of the resolution.

The President: Is the resolution of the gentleman from Custer seconded?

A Member: I second the resolution

Mr. Dixon of Silver Bow: I move to amend the motion of the gentleman from Custer by striking out "committee of one from each district" and inserting "committee of five." The committee is entirely too large.

A Member: I second the amendment.

The motion was then stated by the President.

Mr. Middleton of Custer: Mr. President, it occurs to me that the resolution that has just been adopted provides for the temporary use of the rules of the old Convention. I have no copy of those rules, but I suppose they provide for such circumstances and contests as are necessary. It seems to me that this is a matter that is somewhat in conflict with the resolution just adopted.

Mr. Toole of Lewis & Clark: Mr. President, the resolution which has just been adopted provides that the rules of the last Constitutional Convention of this Territory shall be adopted for the temporary government of this Convention. Among other things those rules provide: (The gentleman then read that part of the rules of the Convention of 1884 relating to the committees.) Those are the standing committees as provided by the rules of the Convention. I think they cover the entire ground

Mr. Loud of Custer: With the consent of my second, I will withdraw my resolution.

Mr. President: There is an amendment offered to it which is now before the Convention.

Mr. Dixon of Silver Bow: I withdraw the amendment.

The President: The motion and amendment offered by the gentleman from Custer is now withdrawn. What is the further pleasure of the Convention?

Mr. Toole of Deer Lodge: In view of the resolution offered by the gentleman from Missoula, I move you, sir, to proceed now to the election of the extra officers enumerated in the resolution.

Motion duly seconded.

Mr Collins of Cascade Mr. President, I move as an amendment, that we postpone the election of the officers mentioned until tomorrow morning at 10 o'clock, when we at that hour proceed to the election of the officers.

Amendment duly seconded.

The Chair then stated the amendment, and the same was carried by a vote of 32 to 23.

Mr Burleigh of Custer: I would like to inquire if the rules which have just been adopted here are in existence so that the members can avail themselves of them There should be some arrangement made whereby we can have a copy.

Mr. Toole of Lewis & Clark stated for the information of the gentleman from Custer that there were no extra copies of the rules to be had.

Mr. Eaton of Park: I understand, Mr. President, that the rules under which we are now acting provide that the hour for the meeting of the Convention shall be 10 o'clock in the morning. I therefore, since we can do no business until this committee on rules make their report, move that we now adjourn.

Mr. Stapleton of Silver Bow It appears to me that a motion was made that we proceed to elect the extra officers provided in the resolution; then that motion was amended that that be postponed until to morrow morning. The motion as amended has never been put to the Convention.

The President then stated the motion, which was duly carried.

Mr. President: The question now is on the adjournment.

The Chair then stated the question on the adjournment, which was duly carried, and the Chair then announced that the Convention stood adjourned until 10 o'clock on the morning of Saturday, July 6th, A. D. 1889.

THIRD DAY.

Saturday, July 6th, 1889.

The Convention called to order by the President at 10 A. M.

Clerk called the roll

The President. I would like the pleasure of the Convention upon the reading of the minutes at the present time. The Chief Clerk is somewhat confused in the multiplicity of his duties and is hardly in shape to present them at this time.

Mr. Collins of Cascade: I move that we dispense with the reading of the minutes until Monday morning.

The President. If there is no objection the reading of the minutes will be dispensed with until Monday morning.

Mr. Toole of Lewis & Clark: Mr. President, the Committee on Rules have instructed me to make a full report and ask for its present consideration. (The report sent to the Clerk's desk.)

The President: The report of the Committee on Rules is before the house, if there is no objection it will be read.

The President The resolution offered by the gentleman from Cascade will now be read.

The Clerk read the resolution, as follows: Resolved, That the following named officers be declared officers of this Convention.

Chief Stenographer	C. P. Connolly
Watchman	George Lee
Clerk	Jno. Kay
Clerk	Edward Kerr
Clerk	John Trumbull
Clerk	E. C Garrett
Clerk	Lee Swords
Page	W. D. Alexander
Page	Cornelius Hedges, Jr.
Page	Maurice Langhorne
Assistant Chief Clerk	William Taylor
Doorkeeper and Asst. Sergt -at-Arms	Wm. Greene

The President: What is your pleasure concerning this resolution?

Mr. Loud of Custer. I move the adoption of the resolution.

Mr. Hershfield of Lewis & Clark. Mr. President, I think the resolution offered by the gentleman from Cascade is at present uncalled for, and I think it proper that this resolution should be laid on the table; I therefore make that motion.

The President: The motion is not before the house yet. Is the resolution seconded?

Mr. Conrad of Choteau: I second the resolution.

Mr. Collins of Cascade: Mr. President, before the Convention is called to vote upon the resolution I wish to say that that was made the special order yesterday evening for this morning at 10 o'clock and that the officers named in the resolution were the ones that the Convention provided for yesterday at the afternoon session.

The President: It has been moved and seconded that the resolution as read be adopted. The gentleman from Lewis & Clark (Mr. Hershfield) moves to lay the motion on the table.

Mr. Callaway of Madison: I second the amendment.

The President then put the amendment and declared the same lost.

The President: The question is now upon the original resolution.

Mr. Toole of Lewis & Clark: Mr. President, let me inquire whether the resolution embraces the name of William L. Green for Assistant Sergeant-at-Arms.

The Clerk stated that by permission of Mr. Collins of Cascade the name of William L. Green for Doorkeeper and Assistant Sergeant-at-Arms is inserted in the resolution.

The Chair then put the motion, which was duly carried.

The President: The report of the Committee on Rules will now be read if there be no objection.

The Clerk then read report of Committee on Rules.

Mr. Toole of Lewis & Clark: Mr. President, the Committee on Rules having under consideration the subject of rules for the government of this body had before them the copy of the rules of the Constitutional Convention of this Territory in 1884 and it was the testimony of those who were members of that Convention that the business of the Convention was disposed of orderly and with dispatch under those rules and we therefore took them very largely as they were. Some modifications have been recommended by the committee, among others one relating to printing. Instead of having printed generally all resolutions and propositions intended to be embraced in the constitution the committee thought it advisable that only such matters should be printed as should be reported back from a standing or select committee, and in case it was reported favorably it was to be printed as a matter of course, and in the event it was reported adversely the printing of the resolution or proposition was to be within the discretion of the Convention. We provided further that the printing committee should have control of the subject of printing. In order that the original propositions and resolutions might not be lost or mislaid by going into the hands of the printer we thought it advisable to provide that it should be the duty of the printing committee to see that certified copies of the matter were made and placed in the hands of the printer to be by him printed and returned as soon as possible; provided, however, that a greater number than 150 should not be printed. I believe that those are substantially the changes and modifications made in the rules of the former Convention, with the exception that we thought it advisable to add to the numbers of the special committees which were provided for by those rules, and I think we added about in the proportion of two or three to each committee. Where it was three we added so as to make it five and so along down the list of committees.

Upon the reading of the rules I discover that one was omitted which was recommended by the committee and which I will now ask to present, and in connection with it that it may be presented with those rules so that when they are voted on they may all be considered together.

Mr. Hershfield of Lewis & Clark: Mr. President, I would like to ask the Chairman of the committee in reference to the rule relating to the President pro tem.

The rule provides that in the absence of the President there shall be a President pro tem. Does that mean for the day or for the entire session of the Convention?

Mr. Toole of Lewis & Clark: It will provide simply during the absence of the President.

The President: The additional rule reported by the Committee on Rules will now be read.

The Clerk read the rule.

The President: Gentlemen, what is your pleasure concerning the report of the Committee on Rules?

Mr. Burleigh of Custer: Mr. President, it strikes me that one of the most important committees here is the one on apportionment and representation, and it is one of the smallest committees in point of numbers. I see that the Committee on Mines and Mining has nine members, and that on Apportionment and Representation seven members. I move to make the Committee on Apportionment and Representation eleven members

The President: I suggest to the gentleman from Custer that it might be well to receive this report and then take it up

Mr. Craven of Lewis & Clark: I move you, Mr Chairman, that the report be received for the consideration of the Convention.

Motion duly seconded.

The Chairman put the question and the same was duly carried.

Mr. Burleigh of Custer: I now put my motion and ask that the Committee on Apportionment and Representation be increased from seven to eleven members.

Motion was duly seconded

The President: It is moved and seconded that the Committee on Apportionment and Representation be increased from seven to eleven members. Are you ready for the question?

Mr Toole of Lewis and Clark: Mr. Chairman, the Committee on Apportionment and Representation, as suggested by the gentleman from Custer, is certainly a very important committee; but I think it was the idea of the Committee on Rules that owing to the importance of the matter, and with the view of being able to have a fair representation of the members present, for the consideration of business, and in view of the fact that if there should any difficulty arise in the Convention, as invariably has been the case in the legislative assemblies of the Territory, it would probably arise in the adjustment and apportionment of this question of representation, and that we could perhaps dispose of it, better reach a fair and just conclusion by a smaller committee, than we could by a larger representation, and I think that it was with this view that the Committee on Rules recommended the number. I think that it will result advantageously to the convention by having a smaller representation, rather than by having a large one.

Mr. Bureligh of Custer: I suggest that my views are correct. It is very seldom one man will disagree with himself; but we are here acting for several Counties where there are large interests, it seems to me that it is nothing more than right that the people from the different localities in the Territory have pretty fair representation, and have something to say. I must stand by my motion.

The Chairman then put the question, and a division being called for by Mr. Burleigh, 30 members voted in the affirmative, and 27 in the negative.

The Chair then announced that the motion was carried, and that the committee would stand eleven on apportionment and representation.

Mr. Collins of Cascade: Mr. President, as that committee has been increased, I make a motion that the Committee on County, City and Town Government be increased from seven to eleven members. I believe that is one of the most important committees of all, its scope is far reaching, and it is a subject in which all of us in all sections are interested, and I believe that the committee should include the diverse views of the Convention, and of the different portions of the Territory. I would like to see it increased to eleven or fifteen. I make a motion, however, to increase it to eleven.

Br. Burleigh of Custer seconded the motion

The Chairman then stated the motion.

Mr. Middleton of Custer: Mr. President, it appears to me that the gentlemen place a great deal of weight upon the matter of the number of persons upon a committee. Now I believe that so far as the power and duties of committees in the Constitutional Convention are concerned, they differ materially from similar committees in a legislative body, in this, that I believe it is not wise on the part of a standing committee whose duty it is to submit articles and sections proposed to be incorporated in the constitution, to accompany those articles with anything but the mere statement that that is their report; so that in increasing this committee to eleven from the sixteen counties in the Territory, does not give each county representation. If every county is entitled to be heard, we had better have a member from each county, and the more members you add to a committee of that kind the more cumbersome and unwieldy it is. It is a matter that comes before the Convention for full and careful consideration. Every member of the Convention has a right to express his views to that committee; and I believe on any proposition, whether it be judiciary or otherwise, a committee of seven can accomplish more work than a committee of eleven; and when you increase a committee beyond that, it becomes all the more cumbersome and unwieldy, and less consideration, in my judgment, should be given to their report. I think that the resolution as reported by the Committee on Rules gives each committee a sufficient number of persons to do the work of this Convention, and do it well They submit simply what is proposed to be incorporated or embodied in the constitution. It then becomes the property of the Convention, and is referred to the Committee of the Whole, and is considered there from every possible point of view, and in the interests of every locality. I do not see any good purpose or judgment in increasing this committee.

Mr. Stapleton of Deer Lodge: Mr. President, I believe that the committee appointed yesterday was competent to decide this matter I believe that all these questions were fully discussed before that committee, and if we now go to changing the number of these standing committees the different gentlemen in the convention will find that some other committees are not as fully represented as they would like to have them, and each member of the different committees will think that his committee is the most important, and would like to have it increased. I believe, if we undertake now to increase the number of these standing committees, there will be no end of it. I believe in supporting the action of the committee, for the reason that I believe they have fully considered the matter.

Mr. Burleigh of Custer: Mr. President, I have no doubt that the two gentlemen who have just addressed the Convention are sincere in their opinions, and stand ready to justify them with argument; but the reasons which satisfy their minds may not fully satisfy me that I am not right. Now I am in favor of the largest representation that we can get, and I only wish that it would be possible, in the nature of things, in adopting a constitution for the government of the people of Montana, that every voter, every thinking man, could be present and take part in its deliberations. But instead, they have sent here their representatives. Instead of sending a democracy here, they have sent their representatives, and we are a sort of republican institution—a representative institution. It seems to me the larger these committees are, the more nearly we will come to representing the will of the people who sent us here. I am in favor of large committees, in favor of large representation, and as we get further on in the work of this Convention, if I am able to be here, I shall certainly favor a large representation of the members of the Convention in the different work of the convention.

Mr. Knowles of Silver Bow: Mr. President, I think that the number of committeemen would place every member of this Convention upon about three committees. Except where it is necessary to give a committee information as to certain localities, I do not believe that it is good policy to increase these committees, for this reason, that after you get the committees together, it will be found that it will very often occur that you can not get a majority of that committee to act, and hence that these small committees are really better where it is not necessary to have a committee large enough to give special information of the different localities. In relation to towns and cities, what is good for one town or city or county in this Territory, is going to be good for all. The rule is to be general; it is not to be special; and I think that it will be found that our committees are really too large now. As to popular representation, the idea that a committee which is to take up a matter and consider it, is to be a popular assembly, is news to me in a legislative body. We are a popular assembly here, and the reports of these committees will be received in this popular assembly; but when we come to consider matters in a committee, it is a special tribunal, if I may use that word, to frame and put the sentiments of this Convention into proper form and present them here to be considered.

Mr. Collins of Cascade: Mr. President, the Committee on Rules itself believes that important committees should have a large representation. They have appointed 15 upon the Judiciary Committee, and 11 on two or three other important committees; and so by their own report and by their own action, they say important committees should have a large representation. Now I claim that the Committee on Town, County and

City Governments—a committee which reports upon the fundamental law for every county, every town and every city in Montana—is on a par with the most important committee upon the list, and that taking the policy of the committee itself as a basis, this committee should be increased to a proportionate size. Now, the report of any committee in this convention carries with it great weight. Their report, unless fraught by secret opposition or by a large majority, is liable to pass this Convention: and I feel that this committee having to take into consideration these important matters, and take into consideration the diverse views and sentiments of this Convention, and of the people back of this Convention—I believe that instead of seven or eleven, it should be sixteen—one from each county. It may be necessary that the entire form of town, city and county governments, in the interests of the future State, be changed. It may be necessary that they have a different set of officers, different safeguards, different policies and different systems, and it may be best, and I think it is best, to have all the views upon this question, and have a large committee decide, and decide it promptly, so that when it comes before this Convention, we can take the formative views of this committee and pass them without lengthy debate. I believe this committee is a very important one, as important as the Judiciary Committee itself, and a large committee should consider the questions that will come before it, so that a majority can lay down a definite policy, and that definite policy laid down by this committee should be the policy of the Convention.

Mr. Rickards of Silver Bow. Mr. President, there is one proposition that suggests itself to my mind that has not been brought out It seems to me that in all probability the question of the holding over of county officers may come before this committee, and if so, it does seem to me that it would be well to have each county represented on that committee; and I am sorry, indeed, while I am in favor of the amendment offered by my friend from Cascade—I am sorry that he did not make it sixteen, so that each county might be represented on this committee. We have come here from our respective counties, having heard expressions from all sides upon this question, and I believe, as the gentleman from Cascade (Mr. Collins) has said, that the reports of these committees are likely to be adopted. It is proper and right, and I believe it will expedite matters, if this committee can be increased to the number as enumerated by the gentleman from Cascade (Mr. Collins): and therefore I favor the amendment.

The Chair then stated the amendment of the gentleman from Cascade, and the same was declared lost.

The President: What is your further pleasure concerning this report?

Mr. Dixon of Silver Bow I desire to offer an amendment to the last rule sent up by the committee—I do not know the number of it—but it has reference to resolutions to be incorporated in the Constitution being read at length. I desire to offer an amendment to that, in addition, on the final passage, such resolutions or incorporations, or both, in all cases be taken by ayes and noes, and entered on the minutes.

The President· There is an amendment offered by the gentleman from Silver Bow to Rule 29.

Mr. Toole of Lewis & Clarke· I have conferred with a number of the committee, and I am authorized by them to accept this amendment.

The President The amendment offered by the gentleman from Silver Bow has been accepted. Rule 29, as amended, will read as follows·

The Clerk read the rule as amended.

The President The delegation from Cascade county, and also the gentleman from Meagher (Dr. Parberry), wish to be excused until Monday afternoon next.

Mr. Eaton of Park: Mr. President, Mr. Joy of Park county was unexpectedly called away last evening, and I move that he be unanimously accorded leave of absense from last evening until Monday morning.

Mr. Warren of Silver Bow I would like to be excused from the session until Tuesday, on account of business of importance.

Mr. Dixon of Silver Bow· Mr. President, would it not be well to know what time these members can come back, so that we can adjourn to that time?

Mr. Whitehill of Deer Lodge· Mr. President, I move that when we adjourn, we adjourn until 2 o'clock on Monday.

The motion was duly seconded

The President then stated the motion, and the same was carried

The President: The gentleman from Silver Bow will be excused until Tuesday, if there be no objection.

Mr. Toole of Deer Lodge: Mr. President, I desire to offer a resolution.

The resolution was sent to the Clerk's desk and read, as follows:

"Resolved, That a committee, consisting of seven members, be added to the rules, and designated a Committee on Labor."

The motion was duly seconded.

Mr. Toole of Deer Lodge: I presume it is unnecessary, Mr. President, to say that there are a great majority of our people in this Territory who may be designated as laboring men, and a majority of the men who will pass upon this constitution are men who are known and designated as laboring men; and it is only just and proper that we should recognize these men and give them recognition. For that reason I have suggested this resolution.

The President put the question, and the same was duly carried.

Mr. Burleigh of Custer: Mr. President, there is one slight change in the rule relating to reconsideration, if I understand it, that I think might properly be corrected. There is a little apparent obscurity in the matter, and I would like to have the rule read.

The Clerk read Rule 42.

Mr. Burleigh: I think, Mr. President, in order to make it a little plainer, the word "majority" should be stricken out, and "any member who voted in the affirmative" should be substituted. That is the usual phraseology in rules of that kind, and of course, while it may be understood, it is not as clearly expressed as I would like to have it.

Mr. Toole of Lewis & Clarke: Mr. President, I do not think there can be any objection to the change, but the rule as stated is taken verbatim from one of the rules of the House of Representatives; I think it is unambiguous as it stands, and that the language employed is the proper language.

Mr. Burleigh of Custer: Mr. President, I withdraw my amendment.

The President: The amendment of the gentleman from Custer has been withdrawn.

Mr. Toole of Lewis & Clarke: I move, Mr. President, that the report of the Committee on Rules, as amended, be now adopted.

The Chair stated the motion, and the same was duly put and carried.

The President: A resignation has been handed in, which the Clerk will read.

The Clerk then read the resignation of Mr. John Kay as watchman, and the resignation was duly accepted.

Mr. Toole of Lewis & Clarke: Mr. President, the rules which have just been adopted provide that all printing of the Convention be done under the direction and control of the Committee on Printing. I presume the President of this Convention will not be able to announce the committees before Monday, and, in view of the fact that the members generally desire to have a copy of the resolutions, I move that the Clerk of this Convention be authorized to have printed two hundred copies of the resolutions adopted by the Convention today, as soon as practicable, so that we may be able to have them here on Monday.

The motion was seconded.

The Chair then stated the motion of the gentleman from Lewis & Clarke.

Mr. Bickford of Missoula: I move an amendment by adding the words "that the rule be suspended." The report of the committee has been adopted and it is necessary to suspend the rules.

Mr. Toole of Lewis & Clarke: I accept the amendment.

The Chair then put the motion, and the same was duly carried.

The President: The gentleman from Jefferson County (Mr. Bullard) desires to be excused until Monday; if there be no objection leave of absence will be granted him.

Mr. McAdow of Fergus: Mr. President, would it not be advisable to swear in the additional officers of the Convention?

The President: The Chief Justice announces that the members can be sworn in in his office after the adjournment of the Convention. The additional officers elected will wait upon the Hon. Judge Blake and be sworn in, at his convenience.

Mr. Maginnis of Lewis and Clarke: I move that we now adjourn

The motion was duly seconded and carried, and the Convention adjourned until Monday, July 8, 1889, at 2 o'clock P. M.

FOURTH DAY.

Monday, July 8th, 1889—2 O'clock P. M.

Convention called to order, the President in the Chair.

The Clerk called the roll

The President: I would say to the gentlemen of the Convention, that Mr. Knippenberg asks to be excused until tomorrow, also Mr. McAdow and Mr. Brown.

Mr. Toole of Deer Lodge: Mr. Gaylord of Silver Bow desires to be excused this afternoon.

The President: If there be no objection these gentlemen will be excused.

The Chaplain then offered prayers.

Mr. Eaton of Park: Mr. President, if it be in order, I would suggest that Mr. Fields of the Twentieth District is now present, and if the time is appropriate it would be well that he should take the oath in order to take part in the proceedings of the Convention.

The President: The gentleman from Park will please come forward and take the oath of office.

Mr. Fields of Park was then sworn in by the Chief Justice.

The Clerk read the journal of the first day's proceedings, and, after one or two corrections, the minutes were approved.

The Clerk then read the minutes of the second day

Mr. Maginnis of Lewis & Clarke: Mr. President, as Mr. Fields, the member from Park, was unavoidably detained by an accident, I would ask the unanimous consent of the Convention, in case he wishes to do so, that he be allowed to have his name placed among those adopting the Constitution of the United States.

The motion was duly seconded, stated and carried.

Mr. Fields' name was called, and his name was inserted in the minutes as voting in the affirmative on the resolution adopting the Constitution of the United States.

The Chair announced that there being no objection to the journal of the second day, the same stood approved.

The journal of the third day's proceedings was then read.

Mr Middleton of Custer: Mr President, it seems to me that there is one part of the minutes that is not sufficiently specific It says that an amendment was proposed by Mr. Toole, and it seems to me that it was an amendment to a rule. It does not appear whether it was an amendment to a motion or to a rule, as a matter of fact, it was an amendment to a rule. I think the words "amendment to the rule" should be inserted, and I so move.

The motion was duly seconded and carried.

Mr. Middleton of Custer: Mr President, it has been suggested to me that the amendment should be worded somewhat differently, so as to read "an amendment to the report of the Committee on Rules."

The Clerk then read the minutes as amended.

There being no further objection to the minutes of the third day's proceedings, the President announced that they stood approved.

The President: The Clerk will read a communication

The Clerk then read as follows:

"Helena, Montana, July 8, 1889.

"To the President and Members of the Constitutional Convention:

"The Annual Conference of the Methodist Episcopal Church of Montana, in conference assembled, sends greeting, and by their committee extends a cordial invitation to attend a lecture upon the issues of the hour, from a temperance standpoint, to be delivered by Dr. A. B. Leonard of New York, this afternoon at 4 o'clock, in St. Paul's M. E Church, opposite the Court House.

Respectfully submitted.

(Signed) M. J. HALL,
GEORGE M. RYDER,
Committee."

The President: The Chair desires to state in this connection that he is not yet quite ready to announce the committees, but will be ready tomorrow morning; or, if it please the Convention to hold a meeting this evening, I will be ready to announce the committees this evening, at any time they may fix.

Mr Toole of Lewis & Clarke: Mr. President, in view of the fact that the President is unable at this time to announce the standing committees. I move that the Convention take a recess until 8 o'clock this evening.

Mr. Burleigh of Custer: I ask the gentleman to indulge me while I offer this resolution.

The resolution was sent up to the Clerk's desk.

The President: The resolution of the gentleman from Custer will now be read by the Clerk.

The Clerk then read as follows:

"Resolved, That the territorial officers, including the Judges of the Supreme Court, be granted the privilege of the floor of this Convention."

Mr. Toole of Lewis & Clarke: Mr. President, I move to amend, so as to include the members of the Constitutional Convention of 1884.

Mr. Burleigh of Custer: I accept the amendment.

The motion as amended was then put by the President, and the same was duly carried.

Mr. Toole of Lewis & Clarke: Now, Mr. President, I renew the motion which I made a moment ago, that we take a recess until 8 o'clock this evening, at which time no other business will be transacted except the announcement of the standing committees.

The motion was duly seconded.

The Chair then stated the motion. Same was duly carried.

Adjourned until 8 o'clock P. M. July 8, 1889.

Eight P. M., July 8, 1889.

Convention called to order, the President in the Chair.

The Clerk called the roll.

The President: Gentlemen of the Convention, I am now ready to announce the permanent committees.

The Chair then read the list of committees, and desired the pleasure of the Convention.

Mr. Hickman of Madison: I move you, sir, that the list of committees be referred to the Committee on Printing, with instructions to have 150 copies printed.

The motion was seconded and carried.

The Convention, on motion, adjourned.

FIFTH DAY.

Tuesday, July 9th, 1889, 10 O'clock A. M.

Convention was called to order by the President.

Clerk called the roll.

Chaplain offered prayer.

The journal of the previous day was read, and there being no corrections, the Chair announced that the same stood approved.

Mr. Joy of Park sent a resolution to the Clerk's desk.

The President: The resolution offered by the gentleman from Park will now be read.

Clerk read the resolution, as follows:

"Resolution on Preamble. We, the people of the State of Montana, grateful to Almighty God for affording us an opportunity to do so, hereby ordain and establish this Constitution."

The President: If there be no objection, the resolution will be referred to the Committee on Preamble and Bill of Rights.

Mr. Hershfield of Lewis & Clarke sent up a resolution to the Clerk's desk.

The President: The resolution offered by the gentleman from Lewis & Clarke will now be read by the Clerk.

Clerk then read the resolution, as follows:

"Resolution on Preamble: We, the people of Montana, grateful to Almighty God for our freedom, in order to secure its blessings, and a more independent and perfect government, establish justice, insure tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and posterity, do ordain and establish this Constitution for the State of Montana."

The President: If there be no objections, the resolution offered by the gentleman from Lewis & Clarke will be referred to the Committee on Preamble and Bill of Rights.

Mr. Burleigh of Custer: Mr. Chairman, I desire to offer the following resolution, and ask that the rules be suspended if necessary.

The President: The gentleman from Custer offers a resolution.

Clerk read the resolution, as follows:

Resolved; That a committee to consist of eleven members be added to the standing committees of this Convention, to be known as "The Committee on Irrigation," to which committee shall be referred all matters pertaining to the subject of irrigation, coming before this body.

Mr. Burleigh of Custer I move the suspension of the rules and the adoption of the resolution.

Motion seconded by Mr. Loud of Custer.

Mr. Kennedy of Missoula: I move that the resolution be referred to the Committee on Agriculture to report at as early a day as possible.

Mr. Muth of Lewis & Clarke seconded the motion.

The Chair stated the question and the same was put and carried.

Mr. Stapleton of Silver Bow: Mr President, the Judiciary Committee is one of the largest and most important of the committees, and probably will have as much or more work to do than any other of the committees; therefore I move that a Clerk be assigned to the Judiciary Committee.

The motion was duly seconded

The Chair stated the motion.

Mr. Middleton of Custer: Mr. President, it seems to me that the Judiciary Committee ought to be entitled to select its own clerk. If there is any choice in the matter of clerks, it appears to me it ought to be left with the committee.

The President: That may be done by having leave of the Convention, according to Rule 35.

Mr. Stapleton of Silver Bow: Mr. President, I do not mean by this motion that we should have an additional clerk to those already appointed; but I meant that one of the five should be assigned to the Judiciary Committee.

The Chair re-stated the motion and the same was declared carried.

Mr. Collins of Cascade: I move that one of the clerks already appointed be assigned to Committee Number 7—the Committee on Finances of the State.

The motion was duly seconded

The Chair stated the motion.

The President: I would ask the gentleman from Cascade if it is meant by his motion that the committee shall have a clerk for the exclusive use of that committee?

Mr. Collins of Cascade: I think the committee will need the exclusive use of a clerk; but when there is no necessity for his services, they will be turned over to the Convention.

The President: According to your resolution then, it would give the committee the preference of the clerk so long as he was required by the committee.

Mr Eaton of Park Mr President, it seems to me as though some general rule ought to be adopted on this proposition Here are five clerks and many committees These clerks are to be assigned. The first five committees that shall ask for clerks will probably receive them, and the remaining committees will have no clerk, and in some way—I am not prepared to make the suggestion, even; but it seems to me as though some general rule should be adopted whereby these clerks could be used by all the committees I suppose it would not be practicable to confine one clerk to any given committee. It might be hard work for the clerk; but I presume they should be divided around and used on the several committees. As I say, I am not prepared to make the suggestion

Mr. Maginnis of Lewis & Clarke: As I recollect, that was the understanding that the adoption of the rules provided, that if each committee could not have its own clerk, he should be assigned to the committees for duties to be performed, subject to the directions of the chairman of the Convention.

The President: The Chair will state the motion, which has been moved and seconded, that one of the clerks selected by this Convention be assigned to Committee Number 7.

Mr. Toole of Lewis & Clarke: I think it is perfectly apparent from what has been said by the gentleman from Park that if the assignment of these clerks is made at this time, the result will be that there will be about 19 committees, of which 17 will feel that each is quite as important as the other, and that 17 will be left without any clerk, and the result of this will be, perhaps, to excite some feeling, and at least a great deal of inconvenience and disparity between these committees; and I therefore move as an amendment, Mr. President, that the President of this Convention be authorized to assign the clerks to the several committees from time to time as his judgment shall dictate, in order to secure the speedy transaction of business.

Motion was seconded.

The President: It has been moved and seconded that the President of the Convention be authorized to assign the clerks to the several committees as in his judgment he may deem it expedient to do so.

Mr. Rickards of Silver Bow: I would like to ask the gentleman from Lewis & Clarke (Mr. Toole), the mover of this amendment, if his amendment refers to the additional clerks. By the action of this Convention we have already assigned one of these clerks to the Judiciary Committee.

Mr. Toole of Lewis & Clarke: So far as I am concerned, I am willing that the Judiciary Committee shall have one clerk. They will have the greater part of the work, and while I am expressing but my own views with reference to this, I am willing, so far as I am concerned, that that committee shall be entitled to a permanent clerk, and that the other four shall be assigned from time to time as the several committees shall require.

Mr. Collins of Cascade: I believe it is right that I should express to the Convention at this early day my opinion, that it is a very unfortunate and untoward circumstance that we have a top-heavy committee, and I hope that it will not remain top-heavy during the session of the Convention. Now I am perfectly willing that the Chair shall distribute the clerks to the other committees as they are entitled to them; but I believe it is not right that the committee with the most members on it, with the most talent and with the most easy flow of graceful language, and the committee that even if it does endeavor so to do, will probably influence and control the action of this Convention during its entire session, should start in by trying to monopolize the working force of the Convention. My motion is certainly withdrawn in favor of the gentleman from Lewis & Clarke, and I wish only this early in the Convention to express my regret that some committees are so very large, and others so very small; some have such very great influence, and others such very small influence, I withdraw my motion.

Mr. Toole of Lewis & Clarke: Mr. President, if the gentleman withdraws his motion, then I make that as an original motion.

The President: The motion having been amended and the amendment withdrawn, if the gentleman accepts the amendment it will stand with the original resolution. The question now is upon the resolution as amended.

The Chair then put the motion and the same was carried.

Mr. Maginnis of Lewis & Clarke: Mr. President, I desire to ask whether any resolution has been adopted regarding the subject matter of the proposed constitution into sections, and referring it to those various committees, whether the committees will take charge as indicated by their titles without any further action of the Convention, or whether it shall be decided by the Chairman, as the different motions are to be considered.

The President: The Chair will state that there has been no resolution passed as to the distribution of the business of the different committees. The title of the various committees will indicate the work which shall properly go to them. Is there anything further to be presented to this Convention this morning?

Mr. Toole of Deer Lodge: Mr. President, I move that we take a recess until 2 o'clock this P. M.

Mr. Middleton of Custer: If the gentleman will withdraw his motion for a moment, I desire to say as a member of the Printing Committee to the members here present, that if each member will furnish some member of the committee with a memorandum of the distance traveled, or the place from which he traveled, it will aid the committee in getting at the matter of mileage, and leave the matter to be settled as soon as possible. We deem it necessary to get the matter into the shape of a resolution, if the members will take it upon themselves to do so, that we may have some basis to aid us in arriving at the conclusions.

The President: The chairman of the Committee on Printing, Mileage and Contingent Expenses requests of the members of this Convention that they present to that committee all data concerning mileage, and all other matters pertaining thereto. The Chair would urge upon the members a prompt compliance with the request of the Printing Committee. Is there a second to the gentleman from Deer Lodge to take a recess?

A Member: I second the motion of the gentleman.

The Chair then put the motion and the same was duly carried, and the Convention took a recess until 2 o'clock P. M.

2 o'clock p. m.

The President called the Convention to order.

The Clerk called the roll.

The President: I would state to the Convention that the gentleman from Jefferson (Mr. Bullard) was called away on professional business, and desires to be excused. If there be no objection, the gentleman will be excused.

The President: The oath of office has not been administered to the gentleman from Deer Lodge (Mr. Kohrs); if the gentleman will come forward, the Chief Justice will administer the oath of office.

Mr. Collins, of Cascade: Mr. Chairman, Mr. C. M. Webster is detained on account of sickness; I hope the Convention will excuse him until he is able to attend.

The President: The gentleman from Cascade announces that his colleague has been unavoidably detained, on account of illness; if there be no objection, he will be excused.

The President then announced, the Chief Justice not being present, that Judge Liddell would administer the oath of office to the gentleman from Deer Lodge (Mr. Kohrs).

Mr Kohrs was then sworn in by Judge Liddell.

The President: The chair would state to the gentleman from Deer Lodge that it was necessary for the Convention to pass a resolution supporting the Constitution of the United States. That the gentleman may have an opportunity of voting upon it, the clerk will call his name, so that his vote may be recorded on that proposition.

The Clerk then called the name of Conrad Kohrs, and Mr. Kohrs responded Aye.

Mr. Middleton, of Custer. Mr. President, the Committee on Mileage are ready to report as to the matter of mileage for the members.

The report was sent up to the Clerk's desk.

The Clerk then read the report of the Committee on Mileage.

The President: What is the pleasure of the Convention concerning this report?

Mr. Kennedy, of Missoula· Mr. President, I move the adoption of the report.

The motion was duly seconded

The President then stated the motion, and the same was duly carried

Mr. Goddard, of Yellowstone: I desire to introduce the following resolution, and ask that it may be referred to the proper Committee.

The President: The resolution introduced by the gentleman from Yellowstone will now be read,

The Clerk read as follows:

"Resolution in Relation to County Officers. All county and precinct officers who may be in office at the time of the adoption of this Constitution shall hold their respective offices for the full time for which they may have been elected, and until such time as their successors may be elected and qualified in accordance with the provisions of this Constitution and the laws now in force; and the official bonds of all such officers shall continue in full force and effect, as though this Constitution had not been adopted."

The President. If there be no objection, this resolution will be accepted, and referred to the Committee on City and Town Organizations.

Mr. Watson, of Fergus: Mr. President, I desire to introduce a resolution.

The President: The resolution offered by the gentleman from Fergus will now be read.

The Clerk then read the resolution of the gentleman from Fergus, providing for the publication of the general laws passed by the Legislature.

The President: This resolution will be received, and referred to the Committee on Printing, etc., if there be no objection.

Mr. Watson, of Fergus: Mr. President, I have another resolution which I desire to offer.

The President: The resolution offered by the gentleman from Fergus will now be read.

The Clerk read the resolution, as follows:

"That the proper Committee is instructed to consider the question of trusts, and to report to the Convention a provision by which all combinations of capital to prevent competition and thereby raise the price of any necessary articles to the consumer, shall be effectually prevented."

The President: If there be no objection, this resolution will be received, and the chair is of the opinion that the Committee on Corporations other than Municipal is the proper one to which to refer this subject. If there be no objection, it will be referred to that Committee.

Mr. Middleton, of Custer: Mr. President, I desire to offer a resolution.

The President: The resolution offered by the gentleman from Custer will now be read.

The Clerk read as follows:

"Resolved, that the Chief Clerk be instructed to furnish to the Secretary of the Territory a certified copy of the report of the Committee on Report, Mileage, etc., relative to the mileage of the members of the Convention.

Mr. Middleton moved the adoption of the resolution.

The motion was seconded, and the same was duly carried.

Mr. Collins, of Cascade: Mr. Chairman, I move that it shall be the duty of the Chief Stenographer to transcribe daily into longhand the entire proceedings of the Convention, and deposit the manuscript with the President of the Convention daily, for reference to the Committee on Printing, for examination by the Convention, and be deposited with the Secretary of the Territory, and a receipt taken therefor. We have a Chief Stenographer, and some order must be made by the Convention for the purpose of transcribing, recording and doing something with it. I make this as a motion, so that it shall go before the Convention, and be amended, if necessary, or acted upon.

The Chairman stated the motion.

Mr. Burleigh, of Custer: I would like to inquire if it is possible for one man to do this work. If it is not, I should think there should be some arrangement made by which he could have assistants. It strikes me as being a most onerous duty. Let us throw some light upon this subject, and let us know whether he can perform this duty; if not, there should be some resolution passed to furnish him such assistants as is necessary to enable him to do the work.

Mr. Collins, of Cascade: Mr. President, if the Convention passes this motion, or some other motion to this effect, then, certainly, we should introduce a resolution to pay the Stenographer for his services. I have a resolution drawn, which I will introduce, if no one else introduces a resolution to that effect, which prescribes that he shall receive for his services $15 a day and 20 cents a folio for transcribing the record, and that he shall furnish all the necessary labor for performing the whole duty.

The President: Do you offer that as an amendment?

Mr. Collins. No sir. I will introduce this motion, or some other motion to that effect, if the motion now before the Convention is carried.

Mr. Robinson, of Deer Lodge: asked for the reading of the resolution, and the Clerk read same.

Mr. Robinson: Mr. President, I am, in limine, opposed to this proposition. First, it contemplates an impossibility upon the part of the Stenographer. Any one who is familiar with the work of a Stenographer in reporting the proceedings of this assemblage knows the utter impossibility of one man taking the proceedings of this Convention each day as they occur and transcribing them into longhand, and have them ready for us by the next day. That involves an utter impossibility as the work of one man. Now then, so far as the employment of a sufficient corps of reporters to do this work is concerned, and what is contemplated beyond this resolution as supplementary to it—what is suggested by the gentleman from Cascade County—it involves something which is a little beyond the reach of our power; that is, we have not the means. When he suggests the propriety of paying him $15 per day, and so much per folio for transcribing he is silent as to what fund that is to be paid from. It becomes as important to know where it is to be paid from as it is to draw the checks. Then, it is absolutely certain that the provisions of this act of Congress, this enabling act has made no provision of that character. We are not authorized to employ parties to perform this extra service and draw upon the fund of the United States for the purpose of paying the expenses of this Convention. If we present our order in favor of these parties for this service, the Secretary of the Territory will simply refuse payment of it, which he has a legal right to do. From the examination of this question which I have given it, I am satisfied that he would be justified in refusing to pay these bills Then the next question arises, what power has this Convention to appoint any other body of men, or what fund has it to draw upon? None whatever, except what is appropriated by the Congress of the United States Now then, we have no power to bind a future Legislature of Montana, to compel them to make an appropriation to pay these bills, we have none whatever, it becomes only a matter of discretion and magnanimity, or generosity, on the part of a future Legislature to foot the bils that we may incur. Then I say that this resolution, and the whole thing, contemplates a matter that is beyond our reach. It is very easy to pass a resolution instructing the Stenographer to do this work, but the next question arises, how is he to get his pay for it? I say there is absolutely no provision whatever for the payment of these expenses incurred. If the Stenographer sees fit to chance a future Legislature to meet these bills, that becomes a question for his consideration alone, but we have no power now to pay him a farthing for anything he does, nor have we the power to pay some of these other officers that we have employed. Then I say, for these reasons, it seems to me it is impolitic to leap into contracting debts that we have no power in the world to liquidate. Then, unless it was something that was so absolutely essential that it could not be dispensed with, we have got to make some provision, in some way for paying it, but these are expenditures that, it seems to me, are not absolutely essential. Our Chief and Assistant Clerk report all the proceedings of this Convention that are essential They are read from day to day, as they are taken, and they suffice for the practical purposes of the Convention; and what is beyond that, that the Stenographer must report to this Convention, is just simply what I am saying at the present time—what each of the gentlemen are saying—and what is to be reported tomorrow morning and read. It is time consumed, for all that the gentlemen of the Convention can hear and know what it is that is going on, and I imagine it will be no very great benefit to them to re-read tomorrow morning what has been said today in this Convention And then I say that it is not a matter of absolute necessity, and, as we have not the means to pay for it, it seems to me it would not be wise to have it done. For these reasons I am opposed to it. Then, as to the other resolution, the suggestion that would be embodied supplementing the proposition now before us, I would have something to say upon that which it is not necessary to say at the present time But, it seems to me that, as the resolution now stands, it is requiring an impossibility of the Stenographer, because he cannot report these proceedings and have them ready by tomorrow morning, it would take the work of four men, constantly employed—four Stenographers with compensation at $60 per day—to do what is contemplated in this resolution

Mr. Collins· As the whole matter is before the house, both the duty of the Stenographer and the compensation of the extra clerks already selected by this body, I offer, with the consent of the Convention, another resolution to be appended to the first one.

The President The Clerk will attach the resolution to the previous one. and read the entire resolution.

The Clerk read same.

Mr Robinson Do I understand the gentleman to offer that as a substitute to the other?

The President· It is all to be incorporated in the original motion. It becomes part of the original.

Mr Robinson: I would have the further objection to that, Mr. President, that so far as it contemplates $15 shall be the entire compensation for the Stenographer for reporting the proceedings of the Convention and nothing for assistants outside. that would not be unreasonable; but from the knowledge of it I have from the practical work of writing out into longhand, 20 cents a folio is too much. If we had a bank, like some other gentlemen, to foot the bills I would have no objection to allowing the Stenographer 30 cents; but the limited means we have, and from the character of the work, and the practical knowledge I have of employing stenographers, men to transcribe, and compensation which is fixed by the statute of Montana Territory for work of that character, which is 5 cents per folio, which is not large I admit, but I know, in copying, that type-writing at 20 cents per folio is entirely disproportionate to the amount of work that is done; and to report the proceedings of this Convention it would cost us $100 a day—it would cost the State of Montana $100 a day to copy these proceedings; the bills would foot up that amount. Then I say that it behooves us to proceed in as economical way as we can in organizing a new state; and I think this compensation provided for by this resolution is disproportionate, and is wrong.

Mr. Burleigh, of Custer: Mr. President, it seems to me that we started out wrong in the beginning in appointing these committees. I think, before cutting the garment, we should have sized up the cloth, and not undertaken to cut a giant overcoat out of a chemise pattern. We should have employed just such committees and clerks as were necessary, and if there are not ample funds here to pay for them, we can follow the example of our forefathers, which was displayed in 1776, and which we propose to display here in getting the state into the Union, and that is, if the Federal Government is not willing to pay the bills necessarily incurred in creating this Convention and in passing from the territorial state into that of statehood, that the members assembled here release their per diem to compensate a sufficient corps of clerks in this Convention; and therefore I move to amend the resolution of my friend from Cascade, that the members of this Convention release so much of their per diem, to carry on the business of this Convention, as may be necessary.

The President: Is there a second to the motion?

Mr. Collins: Mr. President, it has been determined by the Convention. It is a part of its duty to take the entire proceedings of this Convention in short-hand. That has been already determined, so that it seems the Convention must determine what we shall do with that shorthand manuscript, and how much we shall give the Stenographer for his services Now, I have inquired somewhat into this matter and I find that $15 per day is a very reasonable compensation for the entire services. Usually, for a body of this character or kind, or even for a legislative body, it requires two stenographers, one for one-half of the day and the other for the other half, and during the time the Stenographer is not taking shorthand notes, he is transcribing, with the assistance of other clerks. But here, our Stenographer proposes to take the whole of the proceedings—all of them—our forenoon and afternoon sessions, and during our night session, and to employ assistants to transcribe it into longhand, at his own expense. I am informed from reliable authority that 20 cents a folio is the legal rate in the eastern states for that work. The Stenographer has to reread his manuscript to another Stenographer, and that Stenographer again to transcribe his notes into longhand; that, in the present proceedings of the Convention, may take two or three clerks, but that, when the real work of the Convention begins, it will probably take four; at least four, if not more. So that, all things considered, the Convention having decided that we shall have a Stenographer, I believe that the rates herein mentioned are very reasonable. The Chief Stenographer of the Convention has consented to the resolution, at first insisting that he should have $20 per day, but has consented to the resolution as it now stands, $15 per diem, and will try to perform his duties. Now, if we have a Stenographer at all, I say that we must do something with the record. It wont do to allow him to keep that until the Convention adjourns, and then put it into an old trunk and burn it up. If we have a Stenographer, he should each day transcribe his notes, and do something with the transcript; and if it is not the sense of the Convention, then let us let our Stenographer out, and do with the simple minutes of our Chief Clerk. The salaries of the other officers are, I think, very reasonable. So far as the pay for those officers are concerned, that is something that is yet to come before the Convention. I believe though, for my own opinion, that in some part of our Constitution we can insert a clause which will provide that the first Legislative Assembly shall provide a certain amount of money, name it John Doe, Richard Roe, and so on, completing the entire list and paying them in full for their services in this Convention. And if the people pass this Constitution that we adopt, with that proviso in it, the first Legislative Assembly must pay those bills, and that, if the worst comes to the worst, that the vouchers of this Convention to these employees are worth at least 90 cents on the dollar. But I believe, if this is done. there are plenty of gentlemen who will see that the bills of these employees are not discounted at all. I believe that is a matter for future consideration.

Mr. Middleton, of Custer: Mr. President: The main question that is brought up by reason of this resolution is as to our authority or ability to provide as to how these attaches shall be compensated for their services. It is true that the Act of Congress under which this Constitutional Convention has met and is attempting to act does not provide for the compensation or employment of more clerks or attaches than would be allowed to one branch of a territorial legislature; but here we are, 75 members, for the purpose of framing an organic law for the future state of Montana. It is absolutely out of the question to get along with the clerks and attaches provided for in that enabling act. The question has been touched upon by the gentleman from Cascade, as to the power of this Convention by ordinance to require the first state legislature to pay off these extra expenses, and I will say that I have examined that question to some extent, and the authorities upon the subject, and am satisfied that the Convention has no such power. However, there can be no doubt but what the first legislature that meets in the State of Montana will provide for the compensation of such clerks, stenographers and attaches, as this Convention may deem it wise and necessary and expedient to employ, provided that their compensation is fixed at something reasonable, and I do not think there will be any difficulty in the matter of vouchers being issued under the direction of this Convention, signed by the Chief Clerk and President, being negotiated in the banks of this City, perhaps for 100 cents on the dollar, and wait and run their chances upon what a future legislature will do. But when a question of that kind comes before a legislature in the future, the matter will then come up as to the reasonableness of the compensation attempted to be fixed by this Convention, and I submit that, so far as the compensation of the Stenographer, as provided in that resolution, in my judgment, it is unreasonable; it is too much I do not believe, on the other hand, that it is possible for one stenographer to do this work; I do not believe he can find any clerks that can transcribe his notes; I do not believe he can find another stenographer who can take his shorthand notes and transcribe them into longhand. I believe that we should have two or three, or more, stenographers, sufficient to take down the entire proceedings of this Convention, and pay each one of those stenographers a reasonable compensation—something that the Legislature in the future would say was reasonable, and would not hesitate to provide for. The gentleman from Deer Lodge has suggested that perhaps we had better get along without the stenographer. I do not believe that that would be the part of good judgment Two or three states in the Union did not provide for the keeping of the record of the debates in their Constitutional Conventions; all that they have of the record is simply the published Journal of the Proceedings; and, so far as I have been able to learn, the historical societies of those states, and their supreme courts, would find almost invaluable a record of the debates which took place in those conventions, of which there is no record; and I believe we should provide not only for the publication of the Journal, but for the taking down and transcribing of all of the debates—the entire proceedings of this Convention—and make provision, before we get through, for their publication; that that should be done by a sufficient number of stenographers; that each one should take down shorthand notes to the extent that he could transcribe, and bring here the next day, to be referred, as the other portion of the gentleman's resolution provides. But I do not believe that if the compensation of the stenographer is fixed as provided for in that resolution that the resolution when it comes before the Legislature, will be allowed. I believe it is too much, and that it ought not to be allowed in that kind of way; and it seems to me, that if we get started and find out we have not stenographers enough, we can provide for another one; and when we get further along in the Convention, if the work becomes more arduous, provide for more, so that the proceedings may be taken in full and transcribed in 24 or 48 hours. But for the resolution to go through as it is now, I think, would be a blunder, and I should certainly, although I am in favor of sufficient clerks to do the work of this Convention, and do it well and speedily, and am in favor of paying them a reasonable compensation, I should be forced, at this time, to vote against this resolution.

Mr. Carpenter, of Lewis & Clarke: Mr. President, I do not see the necessity of having a stenographer To extend the transcript of the Stenographer's notes would be of no earthly benefit to this Convention, unless they were printed, and printed copies laid upon the desks of the members of this Convention within 24 or 48 hours at most after the stenographer's notes were taken. Therefore, for this Convention, I cannot see of what earthly use it would be to transcribe and extend those notes. There would be one copy; every member of the Convention would want to see it, and it would be impracticable for the members all to see what had been transcribed. Now, if it would be of any earthly use to this Convention, it seems to me that it should not be done unless it would be a great benefit in the future. There would certainly be a great expense connected with it, if the proceedings were taken so as to be laid upon the desks of the members of this Convention; the cost of the printing alone would be an enormous sum for this Territory. But the question then arises as to the future use. Now, it would be of no earthly use in the future; it would be of no use unless the report was a correct one. Now, the finest stenographer in the world would be apt to make very absurd mistakes. It is almost impossible for any member to hear more than three-fourths of what the other members are saying. Therefore, for the transcript to be accurate, it would have to be carefully examined by every member who had said anything the day before, and there might be a temptation, once in a while, to make it a little different, if it were not as popular as it might have been. But, at the same time, it is to be presumed that each member would want it corrected. Now, it would be impossible for that to be done. Why is it that the minutes of our excellent Clerk are corrected frequently? It is because no person is able to hear precisely everything that is said. Now, it would not be possible for this Committee to report—it would be impossible for the President himself to state precisely every step in the proceedings of the day, and when this transcript was submitted to him; therefore, I think it would be worse than useless for this transcript to be made and filed away for future publication some years hence, and so unreliable that no person who knew of the proceedings would be willing to verify it with his own statement of its correctness. So it would be of no use to this body; and if no reliance could be placed upon it in the future, it seems to me we would be incurring an unwarranted expense by the passage of this resolution, and that the resolution ought not to be carried.

Mr. Toole, of Lewis & Clarke: Mr. Chairman, I understand from my colleague that one of the objections which he makes to the employment of a Stenographer is the unreliability of his report. I therefore ask that the Stenographer may now read the remarks of my colleague from Lewis & Clarke County, in order that he may ascertain with what degree of correctness he is transcribing the proceedings of the Convention.

Mr. Carpenter: I move to amend by including, also, the remarks of the gentleman from Lewis & Clarke.

The President: Was the motion of the gentleman from Lewis & Clarke seconded

Mr. Carpenter: It seems to me, Mr. President, that this matter would get to be child's play. It is not that I question the ability of the stenographer, but it is that I question whether he can catch the remarks of all the members from the confusion in the room. The Stenographer might get my remarks correctly, because he happens to be situated very near me

Mr. Toole, of Lewis & Clarke: The Stenographer, I believe, is situated away over on this side.

Mr Robinson: I arise to a point of order; is the motion before this Convention being discussed?

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, as to the compensation provided by Congress, Congress votes $20,000 in a lump sum for the expenses of the Convention. Now some officer—the accounting officer of some bureau or department in Washington has chosen to say how that shall be apportioned. I venture to say that nearly everybody is familiar with the fact that those gentlemen have, from the beginning, undertaken to make laws, and that their decisions are continually overruled by the gentleman from Dakota; for I venture to say that, during his term as Delegate to Congress, very many of such decisions in regard to territorial legislation and to the expenditure of money thereunder were made by this gentleman, who set up not only to interpret but even to make the laws of the country, in their clerical decisions, were afterwards overruled. And so, Mr. President, in regard to the amount of this $20.000 appropriated by Congress, Congress may, under the persuasions of the two senators and one representative that we will send down there, appropriate sufficient to make up the deficiency; but, in case they stand upon their record, and appropriate no more, they certainly will never wish to have recovered into the Treasury any of the $20,000 that has been appropriated. Now, if this Convention does not waste too much time in debating, there will be ample money appropriated for all of these deficiencies, and though some accounting officer of the Treasury, or some fourth rate clerk, may make an arbitrary decision, it can be corrected by a single line But if these expenses are not otherwise met, then I am sure the Territory of Montana, which now undertakes to bear its own expenses regardless of the Federal Government, will certainly be able, and will meet them with faith and honor. As to the value of the report, I should think that no gentleman would doubt that the report of this Convention would be of extraordinary value to the future. In case of any disputes with regard to the debates on previous days, we will have the record to appeal to at any time to correct misunderstandings that may arise on this floor during the debates of the Convention. As to the method of compensation, it is the ordinary method in legislatures to pay the stenographer so much, and then he pays out of whatever is given him, the transcribers of his notes. Now, the Chief Reporter of the Senate and House of Representatives is each allowed a stated sum, and out of that sum he sees that his notes are properly transcribed into ordinary writing. He may employ one, or two, or three, or four assistants, just as he chooses; he may do it himself if he pleases, but Congress votes him a certain sum, and out of that sum he pays his assistants. I suppose that is the intention in this case; if the gentleman takes the notes of this Convention, and we allow him a certain sum, he will see that it is daily transcribed and put into proper shape.

Mr. Chessman, of Lewis & Clarke: I ask for the reading of the resolution, for information.

The Clerk read the resolution.

Mr. Chessman: I call for a division of the question; the resolution gives to the Stenographer his fees and compensation, and other salaries are added to it; I desire to vote separately for each of these provisions.

Mr. Rickards, of Silver Bow: Mr President, I may be allowed to say that, in my judgment, the first resolution offered by my friend from Cascade is impracticable. As I understand it, the Stenographer shall submit this matter in detail to the President, who shall in turn submit it to the Committee on Printing. Now I would like to ask when this matter is to be read, or how much of it is to be eliminated, so that the Clerk may know how much of it is to be read to this body. It seems to me that in every way it is impracticable. Now, there is a part of this resolution that I would like to vote for, and would like to support.

The President: I will say to the gentleman from Silver Bow, that a division has been called for by the gentleman from Lewis & Clarke (Mr. Chessman), and, according to the rules, any member of the Convention has a right to ask for the division of a question where it contains more than one proposition, so that, if there be no objection, this question will be divided.

Mr. Collins: Before it is divided, I ask permission to insert "and door keeper $5 per day."

Mr. Toole, of Lewis & Clarke: In the resolution he is designated as Assistant Sergeant at Arms instead of Door Keeper.

Mr. Collins: Well, whatever his name is.

The Clerk read the first part of the resolution.

Mr. Rickards: If I am in order, I would move that this part just read be referred to the Committee on Printing, Mileage and Contingent Expenses.

The motion was duly seconded.

The President stated the motion.

Mr. Chessman, of Lewis & Clarke: Mr. President, I would suggest that all that other portion relating to the Stenographer be referred also. I understand the second part was added to the first.

The President: At your suggestion it has been divided.

Mr. Chessman: My desire was that the salaries of the pages and other clerks should be divided. All that portion which pertains to the Stenographer should be divided from the other portion.

The President: According to the way the resolution has been read, it does not embrace all that you desire to be embraced in the first portion?

Mr. Chessman: I understand that the second portion was added to the first, making it all one resolution, and therefore I desire to separate all that which pertains to the Stenographer from the other portions—all the other as to salary and compensation.

The Clerk read the first part of the second resolution.

Mr. Rickards: With the consent of my second, I would change the phraseology of my motion to read, that all parts of this resolution referring to the dues and compensation of the Stenographer be referred to this Committee.

Mr. Burleigh, of Custer Mr. President, I would like to ask for information, through the Chair, of the gentleman from Cascade County, if the compensation named in this resolution is to be the entire compensation allowed the Chief Stenographer for all of the services; in other words, if he is to pay—incur the expense and pay the bills for any assistants he may need here in completing this work, that is, the work named in the resolution.

Mr. Collins: The Chief Stenographer is to employ all the assistant stenographers necessary, and all the necessary longhand writers to thoroughly transcribe and place in the hands of the Convention each day, the proceedings of the Convention, in longhand, at his own cost and expense.

Mr. Burleigh, of Custer: Then I will move to strike out the words "$15" and insert "$20". I am opposed to sending any man out of this Convention a pauper who comes in here a full-fledged citizen. I think the compensation is more than reasonable—it is exceedingly reasonable.

The President: Did I understand the motion of the gentleman from Silver Bow was seconded?

Mr. Rickards: I understood it was.

The President: The question is upon the motion of the gentleman from Silver Bow to commit to the Committee on Reporting, Printing, Mileage and Contingent Expenses, all that portion of this resolution pertaining to the Stenographer and his fee, or compensation. The question now before the Convention is upon the commitment of this question.

Mr. Eaton, of Park: I would like to ask the gentleman from Cascade for information in regard to the 20 cents per folio—whether or not he intends that to be additional compensation over the $15 to the Stenographer as an excess over the legal rate. I understand the legal rate in this Territory for transcribing is very much less than 20 cents per folio, and I wish specifically to know if the gentleman from Cascade means that as an additional inducement to the Stenographer to perform all those duties enumerated himself, and to pay his own assistants; or whether the gentleman from Cascade does understand that 20 cents is the ordinary legal rate.

Mr. Collins, of Cascade: Mr. President, the intention is that the Chief Stenographer and his assistants—he must appoint another stenographer to read his shorthand notes to; then the Stenographer he appoints takes the copy in shorthand, and then that is again read by the second Stenographer to the longhand writer. Now the idea of this 20 cents is to divide it between the three, giving ten cents to the longhand writer and ten cents to the two stenographers. The parties who do the writing receive but ten cents per folio; the Stenographer and his assistant receive the other ten cents; and I believe it is well worth it. He not only reads from his notes to the other Stenographer, but after the Stenographer reads from his notes to the longhand writer, he must again re-examine the work, and see that it is in accordance with the official record; so that he has a great deal of work besides the simple work of translating his notes to the other Stenographer, and he and his co-laborer are actually entitled to the ten cents.

Mr. Maginnis, of Lewis & Clarke: Mr. President, if I understand the gentleman from Cascade, the Stenographer undertakes then to deliver a faithful report of this Convention for the sum named in the resolution, $15 a day and 20 cents per folio, to be distributed among his assistants.

Mr. Rickards, of Silver Bow: Now, Mr. President, may I say a word in support of my motion? I am in favor of the employment of a Stenographer to report the proceedings of this Convention, so much as may be necessary for the Chief Clerk to complete his record; but I am not in favor of reporting these debates, for, if that were to be the case, this debate has already cost the Territory over $100. I do not understand it as a business method. It does not look to me like a business method of conducting the affairs of this Convention, and therefore I am not in favor of the employment of a stenographer to write out in detail and submit to the President of this Convention the proceedings of the Convention. And I believe that in submitting this matter, or referring it to this Committee, as I had in view in my motion, that they would present it to this body in a more business like manner. I say this without any disparity to my friend from Cascade, but I believe that the ends before us would be better subserved.

The President then put the motion, and a division being called for, the same was carried.

Mr. Collins: Mr. President I move to refer the other resolution to the same Committee. The same question was brought up in debate here, and we should settle the whole matter at once.

Mr. Collins' motion was seconded.

Mr. Toole, of Lewis & Clarke: Mr. President, I do not see any necessity for referring that portion of the resolution to the Committee at all.

The President: If the gentleman will allow the Chair to state the question, the question now pending is in relation to the commitment of the other portion of this resolution.

Mr. Toole, of Lewis & Clarke: I see no necessity for referring that portion of the resolution to the Committee on Printing and Mileage. It involves simply the question of the salary of these respective officers embraced in the resolution. It comes especially within the purview of that Committee. This Committee is specially charged with that, and therefore, as to that part of it affecting the manner in which the report be made, the compensation which might be voted to him by this Convention would come within the jurisdiction, properly, of that Committee. Certainly, so far as the other part of the resolution is concerned, it does not relate to the question of reporting, or printing, or mileage, and, therefore, that Committee would have no more jurisdiction than any other Committee of this Convention.

Mr. Robinson, of Deer Lodge: I desire to arise to a point of order. It is moved to refer to a Committee, which is not debatable according to my recollection of the rule.

The President: I would say to the gentleman from Deer Lodge that the question to refer is debatable.

Mr Chessman, of Lewis & Clarke: I see no reason why this matter should not be disposed of at this time. It is simply a question of how much salary the attaches of the Convention shall receive, and surely it is not exorbitant. There is no reason why we should not vote upon it now, and, for one, I am ready to vote now in favor of it.

Mr. Collins, of Cascade: The gentleman from Deer Lodge brings up the question as to whether we are entitled to employ any officers except those provided by law, and he laid particular stress in his argument upon that point. The gentleman from Custer stated that it was not within the provisions of the Convention to authorize or compel the first Legislature to pay these officers So this question comes up and should be settled before it again comes before the Convention. I believe that if the whole matter is referred to this Committee, it will investigate not only the legal questions but the other questions, and report thereon to the Convention.

The President· The question is upon the reference of the remaining portion of the resolution. The Chair then put the question, and being in doubt a division was called for, and resulted in a vote of 26 in favor of the motion and 31 against.

The Chair announced the motion lost.

The President: The question pending before the Convention now is upon the division of the remaining part of this resolution; what is your pleasure concerning the remaining part of this resolution.

Mr. Chessman, of Lewis & Clarke· I move its adoption.

The Chair stated the motion

Mr. Eaton, of Park: Mr. President, I am in favor of voting the officers a proper compensation, but it seems to me—(interrupted)

The President: I would state to the gentleman from Park that that portion of the resolution has been referred, and the question now is upon the remaining portion of the resolution.

Mr Eaton: Will the President inform me if the $15 per diem and 20 cents per folio has been adopted?

The President: No, sir, it has been referred.

The Clerk read the remaining portion of the resolution.

Mr. Robinson. I will inquire how many pages we have?

The President· The gentleman inquires how many pages have been appointed, and is informed that the number is four.

Mr. Robinson· How many other clerks are employed?

The President· Five.

Mr. Robinson· I am in favor of being pretty liberal myself, and I would like to know how we are going to pay them, before we indulge in this liberality. That is the only objection I have It seems to me, in the first place, that the number of pages we employ is unnecessary, and I am not certain as to the number of clerks besides those provided by the act of Congress, it seems to me we are launching into it just a little too brash; and if we characterize our whole movements in the state government and in the Constitutional Convention at the same ratio, have everything we do in proportion to this, and if that spirit permeates the legislative bodies of the State of Montana, I predict that it will not be two years before the State of Montana will be so overwhelmingly in debt that many tax-payers will wish we had a territorial form of government instead of a state.

Mr. Collins: Will the gentleman allow me to interrupt him for a moment? The Convention has already allowed the four pages and five clerks

Mr. Robinson: I knew that before. I gained that information from the President. Then I say, that like every other undertaking in its inception, business enterprises or anything else that a man goes into,—like people first launching into the world going to housekeeping, they must be governed by circumstances and their means. If they have not the means to do as they would like—to cut a wide swath, they must circumscribe their actions within their means. This is an important feature of our local affairs, self government, it is one of the most important; it is laying the foundation; it is establishing a precendent for all future time to come; and I say that if we have claimed for years that we are able to maintain a state government —it has been asserted in our legislatures and in the halls of the Congress of the United States that we were capable of economizing and maintaining a state government with the wealth and population we have, that is, if we economize. Now everything depends upon what we do in this Convention. I am in favor of liberality; I am not in favor of being too parsimonious, but I do say that, in order to maintain our government and keep ourselves free from a public debt, it is necessary that every move that we make should be a cautious one, and not involving expenses that are not necessary. Now, this Convention has seen fit to employ these extra pages and clerks without any fund to draw upon for the money, without any appropriation being made for it. I agree with my friend that has made the suggestion in relation to the legal question, that this Convention has no power to bind the Legislature in its action. So far as that is concerned, it can repudiate everything we do. But, presuming that it will honor what debts we have incurred, and pay them, then I say, that while we have seen fit to employ these pages without any means of paying them at all, why then let us limit it down to a compensation as small as they can possibly get along with. Then I say that we might take some of the pay out of our per diem and give to these pages and clerks. But I believe these boys would be patriotic Montanans enough, when they have got the future state to serve, that they would be willing to serve for a little less than $4 per day, what we get for blowing off our wind here. (Laughter.) Yes sir, I believe we should certainly retrench all we can. Upon the other proposition, as it has been referred to a Committee, I shall have more to say when it returns to the House, but I think that the compensation is a little too much, and so I am opposed to the resolution.

Mr. Rickards, of Silver Bow: I would move to amend by striking out the words "of the other" and substitute in lieu thereof "following," so that it would read smooth, that is all. It would then read "that the compensation of the following appointed officers" instead of "the compensation of the remaining officers."

The President: The Clerk will read it as amended, the mover having accepted the amendment.

Mr. Chessman, of Lewis & Clarke: Mr. Chairman, I would like to inquire if there are not six additional clerks, including the Chief Clerk?

The President: The Chief Clerk reports that there are five clerks besides the Chief Clerk.

Mr. Chessman: I understand there is no compensation allowed for the Assistant Chief Clerk, and therefore he should be included in the other.

Mr. Stapleton, of Silver Bow: Before voting upon this question, I desire to know if these officers undertand that there is no provision of law, and no authority in this body to pay them any salary whatever—if they understand that they are to take the chances of the future Legislature of Montana paying them the salaries provided for here? I think that, before we have their services, they should fully understand that; then I am perfectly willing to let them take their chances. I simply ask this by way of inquiry, because, before voting upon this question, before accepting the services of the officers, I, for one, understand we can give them nothing. I understand the only thing this Convention can give them is a certificate, and then, with that certificate in their possession, they take their chances hereafter of procuring their pay from some future Legislature; and all I desire is that they shall be fully informed of this before accepting their services, and I would like to ask some one who knows, if they understand this. If they do, then I am ready to vote upon the question.

Mr. Sargent, of Silver Bow: Mr. President: I am opposed to the appointment of any more clerks at all. It is bad enough to be compelled to sit here and listen to these debates, and I think it would be an act of cruelty to plunge the Territory into debt for the purpose of preserving the eloquence that will be poured forth here and sweep everything before it. Of course, the people are interested in knowing what we accomplish, but the means by which we get at it—the arguments—are not worth anything. Life is too short, we have got too much to do. No one can say anything here but has been said a thousand times before, and better than it will be said here To appoint clerks to transcribe and write out in longhand the proceedings of this Convention would be an act unwarranted, and would be an act of cruelty to them as well as an act of cruelty to those who come hereafter, and I am opposed to spending money in that way.

The Chair then put the question, and the same was duly carried.

Mr. Luce, of Gallatin· I move that we do now adjourn.

The President: I will say to the gentleman, before that motion is put, that there is a communication I would like to have read.

The Clerk then read the following communication.

"Helena, Montana, July 9, 1889.

Hon. W. A. Clark, President of the Constitutional Convention, Helena, Montana.

Dear sir· On behalf of the citizens of Great Falls we extend to you, and through you to the members of the Convention, an invitation to attend the banquet to be given by the citizens of Great Falls on Friday evening, July 12th inst.

Respectfully yours,
(Signed) PARIS GIBSON,
T. E COLLINS,
C. M. WEBSTER.

Helena, Montana, July 9th, 1889.

"Hon W A. Clark, President Montana Constitutional Convention, Helena.

Dear Sir:—The Montana Central railway company will be pleased to accord to the members of your honorable body and their families a pleasure trip through the canyons of the Prickly Pear and Missouri to Great Falls and return, leaving Helena at 11:55 a m. on Friday the 12th inst, going through to the Great Falls of the Missouri, spending the night in the city of Great Falls and returning by special train the next morning, reaching Helena at 12 m. As all your members are interested in the material welfare of our new commonwealth, we will give you an opportunity of inspecting one of the most extensive coal mines in the Rocky Mountain region.

Very respectfully,
(Signed) C. A. BROADWATER,
President.

The President What is the pleasure of the Convention regarding these communications?

Mr. Warren, of Silver Bow: Mr. Chairman, I move that we accept the invitation of the citizens of Great Falls, and also the invitation of the Montana Central Railway Company.

The motion was duly seconded.

The Chair then put the motion, and the same was duly carried.

The President: If there be no objection I will communicate with these gentlemen, and tender, on behalf of the Convention, the thanks of the Convention for their generous invitation. There is now the motion to adjourn.

Mr. Collins, of Cascade: If the gentleman will allow me, I would like to bring another matter before the Convention before we adjourn.

Mr. Luce withdrew his motion

Mr. Collins. Committee No. 7, on the Finances of the State, have had a meeting, and request me to ask the authority of the Convention to employ a clerk—not to take one of the clerks of the Convention, but to employ one specially for it. I ask for the authority, and I make a motion that the Committee have authority to employ a clerk

The President put the motion, and division being called for, the motion was lost by a vote of 24 to 20.

Mr. Burleigh, of Custer, called for the ayes and noes.

The President The question before the House is to empower the Committee on Finances to employ a clerk.

Mr. Rickards, of Silver Bow: That is in addition to the clerks that have already been employed?

Mr. Joy, of Park: I did not hear the result of the vote.

The President: The motion was declared lost.

Mr. Witter, of Beaverhead: I would like to ask if all the clerks are so busy that none of them can attend to that work at the same time, without the necessity of the Committee employing an additional clerk.

Mr. Collins: In answer to the query of the gentleman, I would state, that at the meeting of the Committee it was the request of the Committee that another clerk be employed. We thought the Committee should be the judge of who should be the clerk. The Committee had in mind a clerk, and would like to employ that clerk for the particular services required. We do not think that the clerks already selected would have time to attend to the wants of this Committee. That there are a number of other committees here—in fact, every committee, I believe, for the first week of the Convention, should have a clerk for the purpose of briefing the matter that will probably come before it. The subject matter of each committee will be briefed in such a way, so that the members of each committee can see what those committees have to say upon that matter; I believe that the Convention will be advancing its own interests, and that it will adjourn two or three weeks earlier by appropriating enough clerks. Now, if that is true, I certainly think that a Committee should have the right to choose the clerk that it thinks is qualified for the particular work for which he is chosen. Now, our Committee had a meeting, and said they wanted to employ some one else, and they did it for the reason that they thought the other clerks would be busy in attending to the wants of the other committees. There are only five clerks to go around among those committees, and I believe that the other committees should be empowered to employ extra clerks. Certainly we ask it of the Convention, and I think that the Committee knows what it wants; and I believe that in this early stage the Convention should grant it. I believe that it will expedite the labors of that Committee, and that it will be to the best interests of the Convention to grant it.

Mr. Rickards, of Silver Bow: I arise to a point of order; is a question, after the ayes and noes have been called for, debatable?

The President: It requires one-fifth of the number present to call the ayes and noes, which has not been done.

Mr. Rickards: In answer to what Mr. Collins has said, I would like to say, does not this body think that, by giving this Committee authority to employ an additional clerk—I say an additional clerk—I mean in addition to the five that have already been employed—that it is establishing a precedent that nearly every committee will have a right to ask? Now I want to give notice that the Committee over which I have the honor to preside, if you establish this precedent, will ask for a clerk.

Mr. Burleigh, of Custer: You ought to have one.

Mr. Burleigh called for the ayes and noes.

Mr. Warren, of Silver Bow: Mr. Chairman, I move we adjourn.

The motion was seconded.

The Chair stated the motion.

Mr. Burleigh: Mr. President, I arise to a point of order,—that it is not in order to adjourn when a motion is pending. I asked for the ayes and noes, and, as I understand it, the Chairman did not put the question, to ascertain whether a sufficient number of the members were in favor of calling the ayes and noes.

Mr. Goddard, of Yellowstone: I understand the Chair decided the vote was lost, and I do not think the ayes and noes can be called for after a motion has been decided.

Mr. Burleigh: I withdraw the motion; I ask for no courtesies.

Mr. Toole, of Lewis & Clarke: Mr. Chairman, I desire to make a suggestion before we adjourn, and that is that the Sergeant at Arms be instructed to see if it is not possible to make some different arrangement of the desks of the members of this Convention, as it is utterly impossible for members, during the day, to hear what is going on with the desks arranged as they are. I believe it would be possible to do away with one or two of these aisles. I ask that the Sergeant-at-Arms be instructed to see if some such arrangement cannot be made. It is utterly impossible to hear what transpires.

The President then put the motion to adjourn, and the same was duly carried.

Adjourned.

SIXTH DAY.

Wednesday, July 10th, 1889.

The Convention was called to order at 10 o'clock a. m. by the President.

The Clerk called the roll.

The President announced that he had a letter from Mr. Knippenberg.

which stated that he was compelled to be absent on account of illness in his family, and begged to be excused until noon of Wednesday (to-day).

The Chaplain offered prayer.

The Clerk read the Journal of the previous day.

Mr. Rickards, of Silver Bow: Mr. President, I have a memorial that has been placed in my hands for presentation to this body.

The President: The Clerk then read as follows.

"To the Honorable Members of the Constitutional Convention of Montana.

Honorable and Dear Sirs:—The Montana Conference of the Methodist Episcopal Church, now assembled in Helena, Montana, respectfully memorialize your Honorable Body to expressly consider the matter of legislation regarding the high and important issue involved in Sabbath observance, and that you incorporate in the new Constitution to be framed by you, complete provision forbidding all Sunday traffic and work, except the works of religion, and the works of real necessity and mercy. That you submit with your form of Constitution the following on the subject of Temperance:

That the manufacture and sale of intoxicating liquors, except for medicinal purposes, and except for use in the arts and sciences, the manner of such sale to be regulated as shall be prescribed hereafter, is and shall be forever prohibited in Montana.

That this clause be inserted by you, either in the Constitution to be voted upon, or appended to it, if, in your judgment, it would be jeopardizing it, as a clause to be voted upon separately, at the same election at which the Constitution is submitted, and after insert it, should it receive a majority in its favor of all votes cast.

Having confidence in the ability and integrity of your Honorable Body to perform the functions for which it has been chosen, and with great respect for each of you personally, and with a prayer for the prosperity of our beloved Montana, we remain, fellow citizens of this great commonwealth,

(Signed) THE MONTANA CONFERENCE OF THE METHODIST EPISCOPAL CHURCH,
G C. STULL, Secretary.

The President. The Chair is of the opinion that Committee No. 13, on Miscellaneous Subjects, is the proper Committee to which to refer this memorial, if there be no objection it will be referred to that Committee.

Mr Bickford, of Missoula: Mr. President, Committee No. 1 desires to report.

The report was sent up to the Clerk's desk.

The Clerk then read as follows:

Mr. President, your Committee on Preamble and Bill of Rights respectfully submits the annexed reports for the consideration of the Convention.

(Signed) BICKFORD, Chairman.

Mr. Callaway, of Madison: I move that the report of the committee be received, and be referred to the Committee on Printing.

The motion was seconded.

The Chair put the motion, and the same was duly carried

Mr. Luce, of Gallatin: Mr President, I have a resolution.

The resolution was sent up to the Clerk's desk, and the Clerk read as follows:

"Resolution No. 8. School Lands.

Resolved, that none of the lands granted by Congress to the State of Montana for the support of common schools shall ever be sold or granted, or disposed of in any manner except by lease, nor shall any moneys received therefrom be used for any other purpose than for the support of the common schools of the State."

Mr. Luce moved that the resolution be referred to Committee No. 20.

The President: If there be no objection, the resolution, as read, will be referred to Committee No. 20, on Boundaries, Public Lands and Homestead Exemptions.

Mr. Hogan, of Silver Bow: Mr. President, I desire to offer a proposition.

The same was sent up to the clerk's desk.

The President: Rule No. 21 provides that all these propositions and resolutions shall be on legal cap paper, or printed. They shall likewise be prefaced with the title, briefly indicating the subject to which they refer. The gentleman from Silver Bow will be kind enough to comply with those regulations.

Mr Hartman, of Gallatin: Mr. President, I desire to offer the following ordinance:

The President: The proposition introduced by the gentleman from Gallatin will now be read.

The Clerk then read as follows:

"Proposition No. 4.

ORDINANCE

Be it Ordained by the Montana Constitutional Convention:

1st. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of the proposed State of Montana shall ever be molested in person or property on account of his or her mode of religious worship.

2nd. That the people inhabiting said proposed State of Montana do agree and declare all right and title to the public lands lying in the boundary thereof, and to all lands lying within said limits, owned or held by any Indian or Indian tribes, and that, until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States; and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States. That the lands belonging to citizens of the United States residing without the said State of Montana shall never be taxed at a higher rate than the lands belonging to residents thereof. That no taxes shall be imposed by the said State of Montana on lands or property therein belonging, or which may hereafter be purchased by, the United States, or reserved for its use. But nothing herein contained shall preclude the said State of Montana from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, or has obtained from the United States or any person the title thereto, by patent, or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any Act of Congress containing a provisio exempting the lands thus granted from taxation. But said last named lands shall be exempt from taxation by said State of Montana so long and to such extent as such Act of Congress may prescribe.

3rd. That the debts and liabilities of said Territory of Montana shall be assumed and paid by said State of Montana.

4th. That provisions shall be made for the establishment and maintenance of systems of public schools, which shall be open to all children of the people of the State of Montana.

5th. That this ordinance shall be irrevocable without the consent of the people of the United States and the people of the Territory of Montana.

The President: If there be no objection, this will be received and referred to the Committee on Ordinance, No. 22.

Mr. Kennedy, of Missoula: Mr. President, I desire to offer a resolution.

The same was sent up to the Clerk's desk, and the Clerk read as follows:

"Resolution No. 9. The establishment of New Counties.

Resolved, that in the creation and establishment of counties, they shall be named with regard to mountain ranges, rivers, or other appropriate natural features of the country in the vicinity of the proposed new county.

The President: If there be no objection, this will be received and referred to Committee No. 10, on City and Town Organizations.

Mr. Callaway, of Madison: I desire to offer a resolution, and ask that it be referred to the proper Committee.

The President: The Clerk will read the resolution offered by the gentleman from Madison.

The Clerk read as follows:

Resolution No. 10. Concerning Free Passess by Corporations.

Resolved, that the following be incorporated in the Constitution as one of its provisions, and be properly numbered.

Section .... No railroad, or other transportation company, and no agent, officer or employee thereof, shall issue or give or offer, either directly or indirectly, to any member of the Legislative Assembly, or to any executive, judicial or ministerial office of this State, or of any county, district, township, municipality or other division thereof, any gratuitous transportation over or upon or any pass or free ticket for passage over or upon any route or line, or part thereof, of such Company, or make or direct or consent to any contract or arrangement by which such officers, or any of them, shall be transported or conveyed over or allowed to travel upon such route or line, or any part thereof, at any less rate, or for any less compensation than is charged the public generally; and no member of the Legislative Assembly, and no such officer as above mentioned, shall accept, or receive, or use, while he is a candidate for office, or while he continues in office, or within three months after he ceases to be in office, any pass or free ticket from any railroad or transportation company, or make or consent to any contract or arrangement by which he, or any of his family or employes, shall be transported or conveyed by such company gratuitously, or at any different or lower rate or charge from that required of the public generally. That any railroad, or other transportation corporation or company violating any provision hereof shall forfeit to the State one thousand dollars for each and every violation hereof, to be recovered by action at law; and any officer herein mentioned who shall violate any provision hereof shall forfeit his office, and all the emoluments thereof.

Mr. Burleigh, of Custer I desire to offer an amendment Insert at the word ordinance "this article shall be enforced by appropriate legislation."

The President: The amendment is not in order at present, unless it be accepted

Mr. Callaway: It can be referred to the Committee with the resolution.

The Chairman· If there be no objection, this amendment, with the resolution, will be referred to Committee No. 12, on Corporations.

Mr. Dixon, of Silver Bow: I would move that it be referred to the Committee on Miscellaneous Subjects and Future Amendments; I do not think it properly belongs to the Committee on Corporations.

The motion was seconded, the Chair put the question, and the same was duly carried.

Mr. Toole, of Lewis & Clarke: I now offer the following resolution.

Mr President: The resolution offered by the gentleman from Lewis & Clarke will now be read.

The Clerk read as follows:

"Resolution No. 11. Resolved, that the following be inserted in the Constitution. No property in this State shall be exempt from taxation except the property of the United States, the State, counties, towns and other municipal corporations, and public libraries All mines and mining claims, both placer and rock in place, containing ore bearing gold, silver, copper, lead or other valuable mineral deposit, for which a United States patent is issued, shall be taxed at the Government price therefor, unless the surface ground thereof has a separate and independent value, in which case it shall be taxed as provided by law But all machinery used in mining, and all property and surface improvements pertaining to or upon mining claims which have separate and independent value, and the annual net proceeds of all mining claims shall be taxed as provided by law."

The President· If there be no objections, this will be received and referred to Committee No. 7, on Finances.

Mr. Joy, of Park; Mr. President, I desire to offer a resolution.

Mr. President: The resolution offered by the gentleman from Park County will be read.

The Clerk read as follows:

Resolution No. 12. Resolution on Suffrage.

Every male citizen of the United States above the age of 21 years, who can read and write the English language, and who has not been convicted of treason or felony, and who shall have resided in this State one year, and in the city, county or district where he may offer to vote for six months next prior to any election, and no other persons, shall have the right to vote in this State Provided that nothing herein shall disfranchise any person who was a qualified voter at the time of the adoption of this Constitution."

The President If there be no objection, this resolution will be received and referred to Committee No. 2, on Right of Suffrage.

Mr. Whitehill, of Deer Lodge: Mr President, I desire to offer a resolution.

The same was sent up to the Clerk's desk, and the Clerk read as follows·

"Resolution No. 13 Resolved that all articles from No. 2 to No. 17, inclusive, of the Constitution of 1884, be referred to the appropriate standing committees of this Convention.

Mr. Whitehill· Mr President, I wish to say in favor of that resolution, that most of the resolutions which are now being read are copied verbatim, or at least a part of them, from the old Constitution, and I desire by that resolution to refer each section of the old Constitution, under the heading, to the appropriate Committee of this Convention, and it will thereby save a number of resolutions that are now being introduced.

Mr. Rickards, of Silver Bow: Inasmuch as this matter has already been covered by the report of the Committee on Preamble, and that matter has already been properly referred, I would move that this resolution, presentd by Mr. Whitehill, be referrd to the same Committee.

Mr. Whitehill: The Committee has already reported.

Mr. Luce, of Gallatin: I ask for the reading of the resolution.

The Clerk read the resolution as offered.

Mr. Warren, of Silver Bow: I move the adoption of the resolution.

The motion was seconded.

The President: The Chair would suggest that, according to Rule No. 22, the subject of this resolution may be out of order. It states that proposals and resolutions mentioned in Rule No. 21 shall embrace but one subject.

Mr. Collins, of Cascade:. Mr. President, this would not be intended as a resolution embodying anything for adoption in the Constitution, but a resolution outside of that. It is simply a resolution of reference to come before the body. It would not be a resolution to be numbered under the particular rule which the Chair has read. It is a reslution for reference simply.

Mr. Whitehill: Mr. President, I withdraw the resolution and put it in the shape of a motion. I move that the matter contained in that resolution be adopted.

The Chair then put the motion, and the same was carried.

Mr. Hogan, of Silver Bow: I now offer my proposition.

The President: The proposition offered by the gentleman from Silver Bow will be read.

The Clerk then read as follows:

"Proposition No. 2. To prevent Convict Labor under Contract. That any person or persons convicted of a crime in the State of Montana, and while under sentence for the same, shall not be allowed to labor for any individual, company or corporation. Neither shall the State have power to enter into an agreement or contract with any indivdual, company or corporation to have convicts do any labor that will in any way compete with free labor.

Mr. Burleigh, of Custer: Mr. President, as there is nothing before the Convention at this moment, I would like to make a suggestion for the consideration of the members, and they can take such action upon it as they see fit. It becomes more apparent every passing hour that the great bulk of the labor to be performed in this Convention is to be done in the committees—all preliminary work, to say the least—and I would suggest for the consideration of the members, whether it would not be better to agree to one morning hour here for the ordinary routine business, and then allow the balance of the day to the committees, in order to prepare their work, &c., until such time as there is sufficient business before the Convention, in the shape of the reports of the committees, to require two sessions a day. I simply mention the matter in order to bring it before the Convention. I do not desire to intrude my own opinions in any way, but it seems to me, as a matter of economy of time, that we ought to have some arrangement of that kind.

Mr. Maginnis, of Lewis & Clarke: Mr. President, I fully concur in the suggestions of the gentleman from Custer. I think that having one morning hour here for the introduction of resolutions and petitions, in the form of business, and then taking a recess, say until 4 o'clock, coming together again and going over what may be necessary to be done at that time, and then adjourning, would be perhaps the best way we could spend our day, until such time as the committees who are to lay the ground-work of the Convention will be ready to report. To do otherwise would simply be wasting our time, as we have done today and yesterday, in the introduction of resolutions covering ground which has already been covered.

Mr. Carpenter, of Lewis & Clarke: This question might as well be decided now. As the gentleman from Lewis & Clarke says, it is a waste of time to remain here while important work remains to be done by the committees, and I therefore move that the Convention do now adjourn..

Mr. Maginnis, of Lewis & Clarke: I move that we take a recess until 4 o'clock.

Mr. Carpenter, of Lewis & Clarke: I cannot see any advantage in having two sessions a day.

Mr. Middleton, of Custer: I would like to offer a resolution in regard to the matter of amending the rules in regard to committees.

Mr. Carpenter: I will yield to the gentleman.

The President: The gentleman from Custer offers the following resolution.

"Resolved that the Rule No. 36 of the Rules of this Constitutional Convention be amended by adding to subdivision 6 of said Rules the following words: Provided that the committees numbered 17, 19 and 21 of the standing committees of this Convention may report at any time during a session of the Convention."

Mr. Middleton, of Custer. Mr. President, I would move the suspension of the rules, and ask that that resolution be placed upon its final passage. The committees that it relates to are the Committee on Reporting and Printing, the Committee on Engrossing and Enrollment, and the Committee on Revision, Phraseology and Adjustment; and it seems to me it will expedite the work of the Convention if these committees are allowed to report at any time they are ready to report, whether it is the order of business or not. I think these committees ought to be allowed to report when the Convention is in session.

Mr. Burleigh of Custer seconded the motion.

The President then put the question.

Mr. Carpenter, of Lewis & Clarke: I would move that Committee No. 21 be excluded from that resolution That Committee ought not to report until the entire Constitution has been settled upon, and then the arrangement of the sections and the phraseology can be corrected.

The President. The question is upon the adoption of the resolution.

Mr. Middleton, of Custer: Mr. President, I presume that Committee No. 21 should be stricken from that resolution, and I move that it be so amended.

The President: If there be no objection to this amendment, it will be received. Committee No. 21 will be eliminated from the resolution.

The Chair stated the motion, and the same was carried.

The Chair then put the question on the motion to adjourn, and the same was duly carried.

Adjourned.

SEVENTH DAY.

Thursday, July 11th, 1889.

Convention called to order by the President at 10 A. M.

The Clerk called the roll.

The Chaplain offered prayer.

The Clerk read the journal of the previous day, and the same stood approved without correction.

Mr. Conrad of Choteau, chairman of the printing committee, sent up a report of said committee to the clerk's desk.

Mr. Eaton of Park, chairman of the committee on military affairs, sent up report of said committee.

The Clerk read the report of the committee on military affairs as follows: "Mr. President, the committee on military affairs having had under consideration the subject of military affairs for the constitution, respectfully submit the following report, and recommend the adoption of the same.

Article .... Section 1.—The militia of the state of Montana shall consist of all able bodied male citizens of the state between the ages of 18 and 45 inclusive, except such persons as may be exempt by the laws of the State or of the United States.

Section 2—The Legislature shall provide by law for the organization, equipment and disciplining of the militia, and shall make rules and regulations for the government of the same. The organization shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

Section 3—The Legislature shall provide by law for the maintaining of the militia by appropriations from the treasury of the state.

Section 4.—The Legislature shall provide by law for the safe keeping of the public arms, military records, relics and banners of the state.

Section 5.—When the Governor shall, with the consent of the Legislative Assembly, be out of the state in time of war at the head of any military force thereof, he shall continue Commander-in-Chief of all the military forces of the state.

(Signed) EATON, Chairman"

The President: If there be no objection, this report of the committee on military affairs will be received, and referred to the committee on printing, with the request that it be printed.

The President: The chair would ask the chairman of the committee on agriculture and other affairs, if a report is not due on a reference made to them three days ago, if the chair is not mistaken, on the subject of irrigation?

The chairman of said committee, Mr. Kohrs, sent up the following report, which was read by the clerk as follows:

"Mr. President, your committee on agriculture, manufactures, etc., to whom was referred resolution number three, beg leave to say that we have considered the same, and would respectfully recommend its adoption by the convention.

(Signed) C. KOHRS, Chairman

The President: This resolution refers to the appointment of a committee on irrigation, the number to be placed on that committee was left blank in the original resolution, and has not been reported by the committee.

Mr. Burns, of Lewis & Clarke: I would suggest that there be a committee appointed to consist of 11 members, and I make a motion to that effect.

The motion was duly seconded.

The President put the motion and the same was carried

The Clerk then read the resolution as completed.

Mr. Burleigh, of Custer, moved to amend by adding to the resolution the following: "To which committee shall be referred all matters pertaining to the subject of irrigation coming before this body."

The President: What is the pleasure of the convention concerning the resolution as amended, and the report of the committee.

Mr. Witter, of Beaverhead: I move the report of the committee be rceived and adopted.

The motion was duly seconded.

The President put the motion and the same was duly carried.

The President: The report of the committee on printing will now be read.

The clerk read as follows:

"Mr. President, your committee on reporting, printing, etc., having had under consideration resolution number seven, relating to the official stenographer and his compensation as introduced by Mr. Collins, would most respectfully recommend the following in lieu thereof: Resolved, that it shall be the duty of the chief stenographer to transcribe daily into long hand the proceedings of the convention and deposit the manuscript with the president of the convention, daily, for reference, and to the committee on printing for examination, and after approval by the convention to be deposited with the Secretary of the Territory and a receipt taken for the same; that the compensation of the chief stenographer shall be $15 00 for each and every day this convention shall actually sit in session, and that said chief stenographer shall be entitled to the additional sum of 15 cts. per folio for each and every folio transcribed by him from his notes of the proceedings of the convention.

(Signed) C. E. CONRAD, Chairman

The President: What is the pleasure of the convention concerning this report of the committee on reporting, printing, etc.?

Mr. Collins, of Cascade: Mr. President, I move that the report be adopted.

The motion was seconded.

Mr. Robinson, of Deer Lodge: Mr. Chairman, the adoption of the report means the final action on it. It is necessary to receive the report before any action is taken on it, and I therefore move that the report be received.

Mr. Collins: Mr. President, I have always thought that when a report was received from a duly organized committee of this body, that there is no necessity for a motion that it be received in fact, and that if it is not referred or placed on file, the proper action is to adopt, so as to bring it before the house. Certainly the report has already been received. It is entirely superfluous, after the commitee has reported, to move that it be received.

The President: I think the gentleman from Cascade is according to rule 37 correct upon this proposition.

The President then stated the motion

Mr. Robinson. That brings it up on its final action.

The President. The gentleman from Fergus is entitled to the floor.

Mr. Watson, of Fergus: Mr. Chairman, it was not until immediately before the meeting of this body, that I was advised of the action taken by the majority of the committee, and I desire now to state, without wishing to make any minority report, that I should have some objection to the adoption of the resolution as presented by the majority of the committee. I do not wish to make a speech, and I trust that the stenographer will not take down my very brief remarks at any length. But there are very serious objections it occurs to me to the adoption of this resolution. I think that the matter, as presented to this body, of obtaining through the stenographer an accurate and reliable report of the proceedings here, and the remarks made by members, is impracticable. I do not think that the object will be secured. In the second place it would be impracticable as to the matter of price. I do not think that the pay is sufficient. I do not think that the proposition of reporting every word that is said here, every motion made and all the remarks of the members, for future examination is practicable. If I understood the remarks made by the gentleman from Cascade the other day, in reference to the resolution it proposed that the chief stenographer shall prepare his notes; that he shall read them to a second stenographer, that the second stenographer shall re-read them to a long hand writer. That in the next place they shall be referred to the president, and in turn referred to the committee on printing for examination as to their accuracy. I do not think that is practicable; and again if it were practicable, and if a sufficient amount of money were provided for doing the work, I think it would cost too much On a little consideration, I believe you will come to the conclusion that these reports can be made, and made accurate, so as to be worth anything in future as a reference. I do not think that a matter of $5000 or $10000 will pay for it; and therefore I think we are going a little too far. I do not wish to judge for any other member of this convention, but if my constituents have done me the honor to send me here, I must submit to what I think would be their judgment. They are largely composed of ranchmen, and they are especially poor this year; and I do not wish by any action of mine to propose or vote for one dollar of unnecessary taxes And further than this Mr. President, I do not think we will need a stenographer; I do not think we want one; I do not think there is ambition enough among the members here to be reported in full, or that any of the members of this convention desire such a report. I do not think the game is worth the candle, and I felt at one time very much disposed to move to lay the whole subject on the table; for the present I will confine myself to moving the indefinite postponement of the whole matter, and the discharge of the stenographer.

Mr. Middleton, of Custer. Mr. President, as a member of the printing committee, and one of the majority that concurred in the report of the committee which has just been read, in reply to the gentleman from Fergus, I simply want to say that I understood it to be the general sentiment of this convention that its entire proceedings should be kept in some way or another for future reference, perhaps for future publication. I agree with the gentleman in a sense, that is to say, so far as the ambition of the members here to go into print on everything they do, and every word they say, I do not believe the general sentiment is such as wants it for that purpose. But I do believe that it is important and wise, that not only the entire proceedings, but the entire debates of this convention be reported, that in future ages, perhaps 40, 50 or 100 years from now, they will become of value; and the older the state of Montana grows, the more valuable these debates and the record of proceedings will be. Now as to the matter of this expense, I am one who was disposed to feel that $15.00 per day, and 20 cts per folio for transcribing all of the short hand notes was too much. I think the committee have given that matter mature consideration. They have consulted with the stenographer we have here, Mr. Connolly, and with others, and we have come to the conclusion as indicated by that report, that this work cannot be done, and properly done for less money than as suggested by the report—that is $15.00 per day and 15 cts. per folio for the transcript Mr. Connolly has agreed with the committee, or indicated to the committee, that he would accept that proposition, if the convention adopted that report; and it seems to me that it is within reason, in view of the fact that these proceedings should certainly be reported.

Mr. Robinson, of Deer Lodge: Mr. President, as I have intimated my views to this convention upon this proposition heretofore, it is necessary to add but little more to what I have said. In the first place so far as the reasonableness of the compensation is concerned, I have only this to say, that in the experience that I have had with stenographers in copying their reports of judicial proceedings into long hand upon typewriters, I have found them to transcribe very easily 100 folios per day, and from that to 150 folios in a day; and from all I can learn from the stenographers that I have had employed in such work as that, 100 folios a day is not an unreasonable days work. Then there is $15.00 per day to the stenographer for transcribing these notes. Our statute has fixed the compensation of stenographers for transcribing their work and reports at 5 cts. per folio, and they can make good wages at that, so they tell me; and they do not hesitate to do the work at that price. So far then as the $15.00 per day for the work in the convention is concerned, I care but little about the cost, because it amounts to but very little itself. One man can do that very easily for the few hours we are in session, and I care not whether it is $8.00 per day, $10.00 per day or $15.00 per day. But there is something underlying the whole thing that causes me to oppose the whole system of reporting these proceedings. If, Mr. President, it is material to report the debates of this convention—if anybody should have the curiosity in future years, probably when many of us are dead, to read the proceedings of this convention, the most important of all the proceedings are the debates and discussions upon material propositions that occur in the various committees; at least there should be there, where each and every proposition is more thoroughly digested by the respective committees than anywhere else. Then if it is material to report the debates, it is material to report the discussions in the various committees. There is where the work is done. Then if the debates that occur in this room are only reported, we have got but a portion of them, and it is necessary to have a stenographer for each of these various committees. Now then, so far as the materiality is concerned, I have this to suggest. I would ask the gentlemen of this convention, how many of them have read the debates in the convention that framed the constitution of the United States where there was some brains employed—men of character—the ablest men that our nation has ever produced were in that convention, where they had not the land marks to guide them that we have, but the whole thing was manufactured out of new cloth entirely; where they discussed these propositions thoroughly, each one at a time. And where those debates have been reported, how many gentlemen of this convention, or how many men since these reports have been published in book form, have ever taken the trouble to read a solitary speech made by these eminent men. I dare say that there is not one American citizen in 60,000 that has ever read these debates. Then I say if the American people did not feel interest enough to read the debates of such an eminent body as that, how many of our constituents who have sent us here will read our discussions in this convention? I think it is fair to state, that there will not be one man in 50,000 that will ever read a word in this convention, hereafter Then I say that so far as any aid to the Courts in interpreting the constitutional provisions that will be embodied in this constitution is concerned, there is nothing in that whatever, because the Courts in determining the statute, or in determining the construction of the statutes or constitution, do not look to the debates that occurred; but on the various propositions they take the instrument itself as it reads on the surface, and interpret from that alone. Then I say that so far as aiding this convention is concerned, these reports can serve no purpose whatever, because they will not be accessible to the members of the convention even if they are transcribed in long hand, one copy of it for the whole convention, within 24 or 48 hours after they occur, they are inaccessible to the members of the convention. Therefore they can be of no use or benefit to the convention as it progresses. Then it can only be for just merely the speeches of the convention. As I suggested before so far as the material part of our work is concerned, as it progresses our clerks keep a faithful record of that. The memories of the members of the convention are refreshed on it as to all that it material, that is necessary for us to know. Then the only purpose that the report of the stenographer would subserve, would be to preserve the speeches that are made here. Then I say as these speeches are only for future reference, and nothing else, and when you consider the fact that in all human probability, so few people will read them hereafter, it seems to me that it is hardly worth while to indulge in the expense of reporting and transcribing these speeches for that purpose. Why, sir, I have myself had occasion to examine the constitutional provisions of the state where I lived for 14 years, where the debates in that convention were open to me every day. I do not think for any purpose that they could serve me as a rising politician, statesman, lawyer or citizen, or any other purpose, that it is worth my while to go to work and read those speeches when there was so much to be read. Why, if a man of intelligence will take that which is most important to him and read that, then I say, having as limited time as we have, people will not select these speeches in this constitutional convention and read them, because they will read other matter. Then I think it is a waste of time and money to publish these speeches, and while we desire in organizing our state government to do so in the most rigid economy, yet to supply ourselves and the people with everything that is really needed and beneficial to them, and I think that what is useless and will serve but little purpose, let us eliminate and dispense with. Why, sir, upon this very proposition the celebrated ornithological effort of Mr. Cox was delivered upon a proposition of this kind. To report all this useless kind of matter the government pay the expense of sending it broadcast throughout the land. Mr. Cox opposed that whole system, and that is what called forth one of those three celebrated speeches. It is entitled "The Silver Tongued Speech"; showing in a humorous, ridiculous way, the utter uselessness of scattering those things broadcast throughout the land, because they serve no purpose Why even in the proceedings of the Congress of the United States, how many people read those debates there. Even the ablest efforts of our big men in the Congress of the United States, there is not one in 10,000 of them ever read. So there are piles and piles, wagonloads and steamboat and carloads of matter that is published at the expense of the government of the United States. It becomes a habit and custom to publish them, and the government of the United States has oceans of money to throw away Not that they serve any practical or beneficial purpose whatever, but because it is customary, and the government of the United States is ready and can well afford it. But we are not in that happy condition, and I insist as a matter of economy, let us eliminate everything that is useless where it costs us money.

For these reasons, Mr. President—other members of this convention may do as they please—whether I stand solitary and alone upon this proposition or have the support of a respectable minority of the convention, or the support of a majority of this convention—I feel it my duty as a citizen of Montana Territory, to express my views upon this proposition, irrespective of what anybody may think—irrespective of what the reporters may think in scribbling for the newspapers upon this proposition; it is wholly immaterial to me; it is a duty I feel I owe to myself as a representative of the people of the state of Montana, to express my honest convictions upon this proposition; and for that reason, Mr. President, I shall vote against the whole proposition.

Mr. Ramsdell, of Custer· Mr. President, there are occasions in the life of nations and individuals, when, it occurs to me, that many considerations which would otherwise have unusual weight, are unworthy of being entertained; and it strikes me that the present moment is one. This is the most important gathering that has ever convened within the limits of the Territory of Montana Its deliberations are of vast historical importance, and it seems to me, that for the sake of our constituents, and for the sake of the people of Montana, that the deliberations of this body should be taken down by a stenographer, that our constituents may refer to them in future years. As a question of economy, it seems to me, we might set it aside, this being the birthday, you might say, of the nation. We should set all partisan feelings, all considerations aside, and we should look upon it as a question of liberality. The remarks that have been made by certain members here, carried to their logical conclusion, would destroy all historical memories and collections. History is invaluable, not alone as a collection of past events; but as a matter of reference, whereby future generations may map out their lines of progress, and select those conclusions that have been shown by time and experience to be practicable and sensible. And it seems to me that on the present occasion, we should indeed be imbued more by the spirit of liberality than one of parsimony. As regards the economical administration of this soon-to-be state, there is no member of this convention that will be actuated by a more economical spirit than myself. But I believe there is a wide distinction between economy and parsimony, and I believe that certain members of this convention are verging toward the latter.

Mr. Burleigh, of Custer: Mr. President, I listened with a great deal of interest to the remarks from the member from Deer Lodge, and also to the remarks of the gentleman who has just taken his seat ;and if anything satisfies me of the perfect accuracy of the position taken by my friend from Deer Lodge, it is the able, lengthy and elaborate argument, which he made here in support of his petition. What future generations will care about that speech is more than I know, and more than will ever be discovered I presume. Now I have no objection and think it proper to take down the official acts of every member of this Convention—his vote and all his acts; but the reasons which he assigns for his acts are so liable to be erroneous, that I do object to burden the record of this convention with it. Now if this matter is to prevail, I shall most certainly ask as one of the humble members of this convention that I be excepted from the operation of the rule, for I do not want to transmit to posterity and to my children the reasons that I shall assign for my acts here. I would much rather they would take my acts, and let them infer therefrom the reasons which actuated me, than to have my reasons taken down in black and white. I shall sustain the position taken by the gentleman from Deer Lodge, for I believe it to be perfectly right and proper. I do not wish to consume the time of the convention in any elaborate argument upon the proposition, but will sustain it.

The President: The question before the convention is upon the adoption of the resolution. There is a motion offered that it be indefinitely postponed, which has received no second as I understand it.

Mr. Robinson: I second the motion.

The President: The question now is upon the indefinite postponement of the resolution.

Mr. Carpenter, of Lewis & Clarke: I have no objection to the present stenographer if we are to have a stenographer. I believe him to be an able stenographer and perfectly competent to take these proceedings. I have no objection to the price if this work is to be done. But there is one thing in that resolution which it strikes me is entirely impracticable. It provides for the approval of this report by the convention. Now it is impossible for the convention to act intelligently upon that report unless it is read over every morning, or unless it is printed and laid on the desks of the members, which would involve a very great expense. If the report is to be transcribed for the approval of the members, it should be printed, and that would involve a great expense to make the matter at all practicable.

Mr. Toole, of Lewis & Clarke: Mr. President, it is not unlikely that before the conclusion of this convention, I shall incur the charge of being parsimonious, but sir, so far as this resolution is concerned, I feel very much disposed to vote for, and to sustain it in every way I can. I think, sir, that the position which the gentleman from Deer Lodge has assumed in stating the proposition, is entirely too broad, and presents to the convention a situation of affairs which is not contemplated by the resolution itself. The impression which he makes here is that we are seeking to make a charge against the state of Montana, for the printing of the entire proceedings of this convention. The resolution does not seek to do anything of the kind. It simply provides that the stenographer shall take the proceedings of this convention in detail, and then transcribe and extend them in long hand, so that the legislature of the state of Montana at any session during the existence of this constitution may provide for the printing of the proceedings of this convention if it is deemed advisable to do so. All that is sought to be charged here or recommended to the State to be charged, is whatever may be necessary under this resolution to pay for the reporting and transcribing the notes of the stenographer. I do not agree with the gentleman from Deer Lodge that these reports are wholly invaluable. They may be of no value to me today, or to any member of this convention, or to any gentleman who resides within the territory. But the time may come when the measely sum of $900 or $1000 necessary to preserve the record from which these proceedings can be printed, will be but a tithe of their value. The time may come when they may serve some useful purpose from an historical point of view. I know, sir, that the states of the union, generally, have preserved in detail the proceedings of their constitutional conventions, and I am advised that four or five states have neglected to do this, and that at this time the Historical Societies of those several states, consider that these proceedings would be invaluable if they could be obtained. So far as the mere matter of expense is concerned, the investigation which I have made satisfies my mind that it is not unreasonable. I believe that the stenographer who has been appointed, together with such assistance as he will be able to command, will, with the amount of compensation provided in this resolution, be enabled to report intelligibly the entire proceedings of this convention. It is not like the case suggested by the gentleman from Deer Lodge (Mr. Robinson) where stenographers take the reports of the proceedings of the courts and transcribe them in long hand upon the typewriter, where he asserts 5 cts. per folio is ample compensation, but here it requires an expert stenographer —two of them—one who may take a short hand report in the morning, that one transcribe that report into long hand in the afternoon, and another to go through the same proceedings in the afternoon. So that he has nothing in common with the individual who reports the proceedings of the court, who is required to do only a certain amount of labor, whereas the stenographers who are here employed will be required to do all of the labor whatever it may be, in order that it may be presented here from day to day I have no desire, so far as I am concerned, nor I believe has any member of this convention, any personal desire or ambition, to see anything that he may say reported and printed in any public volume; but I believe that the state of Montana ought not to be behind in a matter which may prove of historical interest and value in the future. We are today without a particle of indebtedness existing against the territory, and if we should be fortunate enough finally to be admitted to the Union, I take it, we will be able to commence our state government without being indebted to the extent of a single dollar. Out of all the new states to be admitted, I think it is safe to say, that for the small compensation that will be required to preserve the proceedings of this Convention, the State of Montana can well afford to be abreast of the times, and on an equal footing with her neighbors.

Mr. Knowles, of Silver Bow. I think, Mr. President, that the use to which the report of the proceedings of this Convention will be put in the future, and their general value, has not been stated. We are not able always to express our views in such perspicuous language that they can be readily understood. The debates of a constitutional convention are used as information in interpreting what is to be understood by the provisions of the Constitution. That is what the meager notes of the debates in framing the Constitution of the United States are preserved for. That is their general value. They are not only used by courts in interpreting that instrument, but the debates of that constitutional convention are used by Congress in determining what should be the scope of the laws they are to enact, and every state legislature of the Union does the same thing. And that is the object of reporting these debates. It is not a matter of history, to transmit to future generations what we have said here. Our imperfect language here would amount to but very little as a matter of history. But what we want with the language that is used here in debate upon the proceedings of the Convention is that the constitution we frame may be properly interpreted. What do we mean by the language we use in the constitution? And for that purpose the reports of these debates may be very valuable Now, courts resort to the history of their time in interpreting a constitution or in interpreting a law. You see that in the great decision known as the Dred Scott decision. They went back to everything of that kind—the history of the times and the history of the constitution to determine what was meant by the term "citizen" in the Constitution of the United States. And so there may be certain provisions in our constitution that will need special interpretation. Much of our constitution will be borrowed from the constitutions of other states, but we have some things that are special. Here we have a committee on irrigation, and that will be almost a special matter with us; and it is going to be a matter that will concern the citizens of this future state very much. And for this reason, I am in favor of supporting the resolution. I know nothing about how much or what is a reasonable compensation. So far as I am concerned. I generally pay these bills when they are presented to me, and say nothing about how much per folio it is.

Mr. Burns, of Lewis & Clarke: I did not see the resolution referred to the committee on printing, but I want to say that the gentleman from Fergus (Mr. Watson) has interpreted my opinions on this subject, and has left me very little to say in the matter. But I think that the report of the majority of the committee, if adopted, will involve us in an expenditure of a great deal more money than this convention imagines. I have here the reports of the convention of Illinois, and the report of that convention there—the cost—amounted to the sum of $57,000. And I know that the reports and the printing of the reports of the Constitution of California for 1878 and 1879 cost something like $20,000. Now, is this convention prepared to involve this new state in any such scheme as that? I do not think so. I do not believe in too much parsimony in this matter, but I do not believe that we can afford to pay anything which will increase the per cent of taxes to such an extent. In regard to the matter of this report being necessary for the interpretation of this constitution in the future, I think we are going to make a constitution that will be so unambiguous to the people of Montana that they will not have to read all the speeches made here in this convention in order to interpret the meaning of it; and so far as that is concrned, I think the record will be good for nothing.

Mr. Stapleton, of Silver Bow: Mr. President, the gentleman who has last spoken has voiced my opinion of this matter. I do not believe that this convention realizes the amount of expense that this would incur to the new State of Montana. We are surely voting a tax upon the people of Montana, when we vote for this expenditure, and the question, it appears to me, that we should consider now is whether if the people themselves had voted upon this question they would have incurred the expense of voting for these taxes. I believe that four-fifths of them would vote against it; and whether or not it would be of any benefit to anyone, I believe it would cost the future State of Montana $40,000 or $50,000; and I do not believe that the voters and the people of Montana Territory, if they could get the debates of this convention in book form, would be willing to pay 15 cents apiece for them. I do not believe that they will ever be read. I will inquire of any man in this Convention, if he has ever read the reports of the proceedings of any convention that has ever been held in the United States; and I venture the prediction that there is not a man within the sound of my voice that has ever read them. There is no gentlemen here yet who has spoken upon this subject who has claimed or pretended to claim that this will be of any benefit to the people of Montana for the present time, or within any reasonable time in the future. Some gentleman—I believe my friend from Lewis & Clarke, Mr. Toole, claimed it would not be of any benefit to any man in this convention, nor would it be of any benefit to anyone now in the Territory of Montana; but that at some future time it might possibly be of some benefit to someone. It reminds me very much, Mr. President, of the old lady by the name of Smith, who bought a second-hand doorplate with the name of Jenkins upon it. She got it for a bargain and so thought she would buy it; and when her husband desired to know why she bought it, her own name being Smith, she justified herself by saying that they might some time in the future have a daughter born to them, and that daughter might marry a man by the name of Jenkins, and that if she did that this doorplate would become practically invaluable. (Laughter.) And that is about as near, Mr. President, as we have come to locating any time when these proceedings will be of any value whatever. Now, for my part, I am not willing to vote these taxes upon the people of Montana, because I believe that they themselves would not incur it if they had a voice in the matter; and we should not be more liberal with their money than they themselves would be. Therefore, I believe it is eminently proper to lay this whole matter on the table.

The President: I would inform the gentleman that there is a motion before the convention to indefinitely postpone the proposition.

Mr. Rickards of Silver Bow: Now if this matter is indefinitely postponed, as I understand, that discharges by that act the official stenographer already employed.

The President: The motion includes the discharge of the stenographer.

Mr. Rickards: As I said the other day when this matter was up, I am in favor of the employment of an official stenographer to assist the clerk in making up his record, and I would be sorry to see the matter indefinitely postponed, for while I am not in favor of the employment of an official stenographer and an assistant to transcribe what he may take down into long hand, yet I am in favor as I say of an official stenographer to assist the chief clerk. Now as has already been said by Mr. [illegible], if this stenographer could take down the debates in the committee rooms, where, I believe, the most brilliant things will be said during our sitting in this body, I do not know but it might possibly be of some assistance or a source of some information for future generations. I had the pleasure last night of hearing in a committee upon which I have the honor to serve, from our brilliant friend, Major Maginnis, a sentiment that I would like to see in print and preserved for all future time—the most brilliant thing that I have heard since I came into this convention. But that would be impracticable. I am in favor of the employment of an official stenographer, and therefore I shall vote against the indefinite postponement of the proposition; and if that motion to indefinitely postpone is not carried, I shall ask for a division of the proposition before us that we may employ an official stenographer, but not to provide for the transcript into long hand of what has been said.

Mr. Muth, of Lewis & Clarke: I move that this question be divided now. I am not in favor of having this work transcribed immediately, but I am in favor of retaining our stenographer. I have no doubt that his notes will be of value, and the time will come when the first legislature of the State of Montana will want these notes transcribed into long hand. That will be ample time to do it. They will then be in a position to pay for the work, and they can provide the funds for the payment of it. The question, as it strikes me, can be readily divided—one proposition to lay the report of the committee on the table, and the other as to the discharge of the stenographer. It strikes me that it can be done very easily, and I ask for a division of the question.

The President: Is there any objection to dividing this question If not, the question before the convention will be upon the indefinite postponement of the report of the committee on printing, except as to that portion which relates to the discharge of the stenographer.

Mr. Robinson, of Deer Lodge: Mr. Chairman, I call for the ayes and noes upon this question.

The President: The gentleman calls for the ayes and noes. All those in favor of the ayes and noes being called will rise to their feet. There is a sufficient number to call for the ayes and noes. The motion now is upon the indefinite postponement of the report of the committee upon printing, except as to that clause which relates to the discharge of the stenographer, which is divided and will be made a separate question.

Mr. Middleton, of Custer: Mr. President, do I understand that the debate is closed on this matter?

The President: I would say to the gentleman that the ayes and noes have been called on this question and the debate is closed.

Mr Middleton: With the indulgence of the convention, however, I would like to say that the matter of the shorthand notes will be absolutely worthless unless they were transcribed. If Mr. Connolly, the official stenographer should die, no living man could read his notes, and the probabilities are that within 5 years he could not transcribe his notes. If they are taken down, they would practically be of no value whatever, except to transcribe them.

The clerk called the roll and the members responded as follows: Ayes: Burleigh, Burns (A. J.), Buford, Bullard, Breen, Carpenter, Chessman, Courtney, Dyer, Eaton, Gillette, Gaylord, Haskell, Hobson, Hammond, Hershfield, Hickman, Joyes, Joy, Knippenberg, Kohrs, Kanouse, Loud, Luce, Muth, Marshall, Marion, Parberry, Reek, Robinson, Rotwitt, Rickards, Stapleton, Schmidt, Sargent, Witter, Watson—36.

Nays: Aiken, Browne, Brazleton, Burns (Edward), Burns (A. F.), Bickford, Conrad, Collins, Cooper, Cardwell, Craven, Cauby, Callaway, Durfee, Dixon, Fields, Graves, Gibson, Goddard, Hartman, Hatch, Hogan, Kennedy, Knowles, Mitchell, Middleton, Myers, Mayger, Maginnis, Ramsdell, Toole (J. R.), Toole (J. K.), Webster, Winston, Whitehill, Warren, Mr. President—37.

The President: The vote stands as follows: Ayes, 36; Noes, 37. The motion to indefinitely postpone is lost. The Question now recurs upon the original resolution that the report of the committee be adopted.

Mr. Chessman, of Lewis & Clarke: Mr. President, I call for the ayes and noes.

A sufficient number being in favor of the ayes and noes the clerk called the roll and the vote resulted as follows: Ayes: Aiken, Browne, Burleigh, Burns (Edward), Burns (A. F.), Bickford, Conrad, Collins, Cooper, Cardwell, Craven, Callaway, Dixon, Fields, Graves, Gibson, Goddard.

Hartman, Hatch, Hogan, Kennedy, Knowles, Mitchell, Middleton, Myers, Mayger, Maginnis, Ramsdell, Toole (J. R.), Toole (J. K.), Webster, Winston, Whitehill, Warren, Mr. President—35.

Nays: Brazleton, Burns (A. J.), Buford, Bullard, Breen, Carpenter, Chessman, Cauby, Courtney, Durfee, Dyer, Eaton, Gillette, Gaylord, Haskell, Hobson, Hammond, Hershfield, Hickman, Joyes, Joy, Knippenberg, Kohrs, Kanouse, Loud, Luce, Muth, Marshall, Marrion, Parberry, Reek, Robinson, Rotwitt, Rickards, Stapleton, Schmidt, Sargent, Witter, Watson—39.

The President: The vote stands as follows: Ayes, 35; Noes, 39. The motion to adopt the report of the committee is lost.

Mr. Rickards, of Silver Bow, sent up a resolution to the clerk's desk, and the same was read as follows:

Resolution No. 13. "Resolved, That the legislative assembly shall have no power to make an appropriation for any purpose whatever for a longer period than two years."

The President: If there be no objection, this resolution will be received and referred to committee number 3.

Mr. Conrad, of Choteau, sent up a resolution to the clerk's desk, which was read as follows: "Resolution No. 14. Resolved, That there shall be no new counties established, unless the assessed valuation within the limits or boundaries described for the proposed county, shall be $3,000,000 or more. No territory shall be taken from any county whereby it would leave said county with less than $4,000,000 of assessed property."

The President: If there be no objection this resolution will be received and referred to the committee on city, town and county organizations.

The President: The gentleman from Park (Mr. Eaton) offers the following proposition, which the clerk will read.

The clerk read as follows:

"Proposition No. 5. Education. Article—, Section—. Every parent, guardian or other person in the state of Montana, having control of any child between the ages of 8 and 14 years who is of ordinary physical and mental strength, shall be required to send such child to a public or private school, taught by a competent instructor for a period of at least 12 weeks in each year, 6 weeks of which shall be consecutive. The legislative assembly shall by appropriate legislation carry this section into full force and effect."

The President: This proposition will be referred to the committee on education, if there be no objection.

The Clerk then read as follows:

"Proposition No. 6 offered by Mr. Eaton of Park. Labor. Article —, Section —. No child under 14 years of age shall by any corporation or person be employed in either mines or manufactures in this state."

The President: This proposition will be referred to the committee on labor (No. 23), if there be no objection.

The President: The gentleman from Gallatin (Mr. Luce) offers the following resolution.

The clerk read as follows:

"Resolution No. 15. Resolved, That no citizen of the state shall ever be required to obtain a license from, or to pay any tax of money to, the state, or any county thereof, or municipal corporation therein, for the privilege or authority to carry on or indulge in any trade, profession, occupation or business whatever."

The President: This resolution will be referred to committee number 7 on the finances of the state, if there be no objection.

The President: The gentleman from Park (Mr. Joy) offers the following proposition.

The clerk read as follows:

"Proposition No. 7. Labor. Section 1. No corporation now existing or hereafter formed under the laws of this state, shall, after the adoption of this constitution, employ directly or indirectly in any capacity, any Chinese or Mongolian. The legislature shall pass such laws as may be necessary to enforce this proposition.

Section 2. No Chinese shall be employed on any state, county, municipal or other public work within this state, except as punishment for crime.

Section 3. The legislature shall discourage by all means within its power the immigration to this state of all foreigners ineligible to become citizens of the United States. All contracts for Chinese of coolie labor to be performed in this state to be void. All companies or corporations whether formed in this country or any foreign country, for the importation of such labor, shall be punished by such fines and penalties as the legislature may prescribe. The legislature shall delegate all necessary power to the incorporated cities or towns in this state, for the removal of Chinese without the limits of such cities, and every other location within prescribed portions of those limits."

The President: If there be no objection this proposition will be referred to committee No. 23 on labor.

The President: The gentleman from Lewis & Clarke (Mr. Burns) offers the following.

The clerk read as follows:

"Proposition No. 8. Whereas the subject of irrigation is of paramount interest to the state of Montana, and one which deserves the serious consideration of this convention, as on it depends in a great measure the future prosperity of the agricultural interests of this state, in view of this fact, the following articles shall obtain a place in this constitution: The legislature shall provide for the construction and maintenance of a system of irrigating canals and ditches in this state. Such canals and ditches to belong forever to the state, and remain under its direct control."

The President: This will properly come under the head of committee number 4, to be appointed, and it will so be referred if there be no objection.

Mr. Field, of Park: Mr. President, I offer the following resolution.

The clerk read as follows:

"Resolution No. 16, relating to the appointment of special deputies, marshals, policemen or private detectives, by sheriffs, mayors, or any other person of the state authorized by law to make such appointments. Resolved 1st. That no sheriff, mayor or any other person of the county, city or state, authorized by law to appoint special deputies, marshals, policemen or detectives in this state, to preserve the public peace, and prevent or quell public disturbances, shall hereafter appoint as such special deputies, marshals, policemen or detectives, any person who shall not have resided continuously in this state for the period of one year at least, and in the county where such appointment is made, for a period of at least six months, prior to the date of said appointment.

2. That it shall be unlawful for any person, company, association or corporation, to bring or import into this state any person or persons or association of persons, for the purpose of discharging the duties devolving upon sheriffs, deputy sheriffs, marshals, policemen, detectives, constables, or peace officers, in the protection or preservation of public or private property, or in the punishment of any person violating the criminal laws of this state.

The clerk then read as follows:

"Resolution No. 17, offered by Field of Park, for the protection of discharged employees. Resolved. 1st. That if any person, agent, company or corporation, after having discharged any employe from his or its service, shall prevent or try to prevent by word or writing of any kind, such discharged employe from obtaining employment, with any other person, company or corporation, such person, agent or corporation shall be guilty of a misdemeanor, and shall be liable for damages to be recovered by civil action.

2. If any railway company or any other company or partnership or corporation in this state shall authorize or allow any of its or their agents to blacklist any discharged employes, or attempt by word or writing, or by any other means whatever, to prevent such discharged employes or any employe, who may have voluntarily left such service, from obtaining employment with any other person or company, such person or corporation shall be liable in treble damages to such employe so prevented from obtaining employment, to be recovered by him by a civil action.

Mr. Toole, of Deer Lodge: Mr. President, I wish to offer a resolution, and if the same is not in order now, I ask the unanimous consent of the convention that it be read.

The clerk read as follows:

"Resolved that it is the sense of this convention that no resolution relating to subject matter proposed to be incorporated in this constitution, shall be in order except as an amendment to the report of some committee."

Mr. Burleigh, of Custer: Mr. President, I move that the rules be suspended and the resolution adopted.

The motion was seconded.

The chairman stated the motion.

Mr. Carpenter, of Lewis & Clarke: I would like to understand the meaning of the resolution before I vote on it.

The clerk read the resolution.

Mr. Maginnis, of Lewis & Clarke: As this is in the nature of a rule, I would ask that the gentlemen consent to have it referred to the committee on rules.

Mr. Toole, of Deer Lodge: I would like to say this, it seems to me that we waste time in the introduction of these resolutions. The committees have been assigned to do this work, and to make reports here on all matters that come up for consideration, and when the committees report it strikes me that if anybody has anything to offer, or the report of the committee should not be accepted, then the committee's report and the matter offered would be before the house, and that would be the proper time to offer these resolutions. I noticed yesterday and part of today, that these resolutions presented here are copied from old constitutions, and I think it is an absolute waste of time, and is taking up the time of the convention. I offer it so that it may be put in working shape as soon as possible, and put in such condition that we can accomplish something, and I wish to adopt the suggestion of the gentleman from Lewis & Clarke, and ask that it be referred to the committee.

Mr. Burleigh: I withdraw my motion.

The President: The question now is upon the suspension of the rules, and allowing this resolution to be received and referred to a committee on rules. There is no debate allowed on this question unless by the courtesy of the members.

Mr. Burleigh: I would say that the motion of the gentleman from Lewis & Clarke was to refer with the consent of the author of this resolution, to the committee on rules, and I therefore thought it was unnecessary to force my motion asking for the suspension of the rules, but that I would withdraw that motion and let it go legitimately if it could to the regular order of business.

The President: Then if there be no objection, this resolution will be received and referred to the committee on rules. Resolutions number 16 or 17 offered by the gentleman from Park (Mr. Fields) will be received if there be no objection, and referred to the committee on labor. The proposition offered by the gentleman from Silver Bow (Mr. Hogan) will now be read.

The clerk read as follows: "Proposition No. 3. To prevent imported labor under contract into the state of Montana.

It shall be unlawful for any individual, company or corporation, having work done in the state of Montana, to import into the state any person or persons under contract or agreement to perform any labor in the state of Montana. That any individual, company or corporation violating any provision hereof, shall forfeit to the state $1000 for each and every violation hereof, to be recovered by an action at law.

The President: If there be no objection, this proposition will be referred to the committee on labor.

Mr. Carpenter, of Lewis & Clarke: Mr. President, I move that the stenographer of this convention be assigned to aid the chief clerk and the various committees as the President shall direct. We seem to have a stenographer, but with nothing to do, and there are quite a number of committees that need assistance; the chief clerk may need his assistance; and therefore I make the motion.

The President: It is moved and seconded that the stenographer be assigned to aid the chief clerk and the committees of the convention as the president may direct.

The chair then put the question and a division being called for, the motion was carried by a vote of 42 to 15.

Mr. Goddard, of Yellowstone: Mr. President, in view of the fact that the convention cannot return from Great Falls until noon Saturday, I move you now that the convention adjourn until Monday.

Mr. Hartman, of Gallatin: Mr. President, before the motion is put, I should like to ask leave of absence until 3 o'clock Monday afternoon; I desire to go home.

The President: If there be no objection the gentleman from Gallatin will be excused until Monday at 3 p. m.

Mr. Bickford, of Missoula: Mr. Chairman, I move an amendment to the motion of the gentleman from Yellowstone, that when the convention adjourn, it adjourn until Monday at 2 o'clock P. M. I am in favor of allowing those persons who see fit to go home in the meantime, an opportunity to return before the meeting of the convention on Monday.

Mr. Maginnis: Mr. President, I ask unanimous consent to offer a resolution before the motion to adjourn is put. I did not have it ready in the regular order of business.

The President: If there be no objection, the gentleman will be allowed to offer the resolution.

Mr. Maginnis: I would like to have it embodied by this convention in a memorial to the president and congress of the United States.

The clerk read the resolution as follows: "Whereas the government of the United States has customarily granted to the new states all the swamp lands within their boundaries; and whereas the quantity of such land in the state of Montana is very limited and of little value, and the government should deal as liberally with this state as with our predecessors, Resolved, that in lieu of the swamp lands, the government should grant to the state of Montana all the arid lands within its boundaries, on such conditions as may provide, that the value of such lands shall be devoted to the purpose of constructing and maintaining reservoirs, aqueducts, ditches and other modes of reclaiming the same by irrigation and making them productive and valuable."

The President: If there be no objection, this resolution will be referred to the committee on irrigation. The motion now is that when the convention adjourn, it adjourn until 2 P. M., Monday.

Mr. Burleigh: Mr. President, I think the hour should be put at 4 P. M., as the eastern train does not get in until that time, and there are several gentlemen living in the eastern part of the territory who wish to go home; and I do not think, from the preparations that will undoubtedly be made at Great Falls to give the convention a fine entertainment, that they will care much about taxing their brains with any very excessive mental labor immediately upon their return. I have been in the habit of attending matters of that kind myself, and from my own experience I am strongly induced to urge the motion.

The amendment was accepted by Mr. Bickford.

The President: The question then is upon the motion to fix the hour to which the convention shall adjourn at 4 o'clock on Monday instead of 2 o'clock.

The chair then put the motion and the same was carried.

Mr. Burleigh: I move that we do now adjourn.

The motion was seconded.

The chair put the motion and the same was duly carried and the convention stood adjourned until Monday, July 15th, 1889, at 4 o'clock P. M.

EIGHTH DAY.

Monday, July 15th, 1889.

Convention was called to order by the president at 4 o'clock P. M.

The clerk called the roll.

The President: Mr. J. R. Toole of Anaconda desires to be excused, as he desires to leave on important business. An excuse is also asked for Mr. Gaylord. If there be no objection, these gentlemen will be excused.

The clerk read the journal of the preceding day.

The chaplain offered prayer.

The clerk then read the following communications.

Mr. Bickford, of Missoula: Mr. President, I move you, sir, that the communication now in the hands of the clerk be referred to the committee of the whole, to be considered in connection with the report of the committee on preamble and bill of rights when the same is taken up.

The motion was seconded.

The chair put the motion and the same was carried.

The clerk then read a communication from Messrs. N. W. Harris & Co., Bankers of Chicago, Ill., dated July 3rd, 1889, urging the convention to embody in the constitution a provision limiting the indebtedness of any county, city, township, school district or other municipal corporation in the state of Montana, to a rate not to exceed five per cent of the valuation of the taxable property thereof, to be ascertained by the last assessment previous to the incurring of any such indebtedness.

Mr. Burleigh, of Custer: Mr. President, I move that the communication be laid on the table.

The motion was seconded.

The chair put the motion and the same was carried.

Mr. Joy, of Jefferson: Mr. President, I desire to present the following petition and request that it be read.

The clerk then read as follows: "Petition for equal suffrage. To the honorable members of the constitutional convention of Montana. We the undersigned adult citizens of Montana, desiring that our woman citizens may enjoy all the privileges of statehood that our men will, would respectfully pray and petition your honorable body to incorporate in our state constitution about to be framed, an equal suffrage provision." The petition was signed by several citizens.

Mr. Goddard, of Yellowstone: I move that the petition be referred to the committee on suffrage.

The motion was seconded.

The chair then put the motion and the same was carried.

Mr. Rickards, of Silver Bow: Mr. President, the committee on education desire to make a report.

The President: The report of the chairman of the committee on education will now be read.

The clerk read as follows: "Mr. President, your committee on education, to whom was referred proposition number 5, introduced by Mr. Eaton, entitled education, beg leave to report that they have duly considered the same, and respectfully recommend that it do not pass.

(Signed) J. E. RICKARDS, Chairman."

Mr. Bickford: Mr. President, your committee number 1 desire to report.

The President: Does the convention desire to take any action upon the report of the committee on education with reference to the proposition?

Mr. Rickards: Mr. President, I move that it be filed for general orders.

The President: If there be no objection, it will be so referred.

The clerk read the report of committee No. 1, as follows: "Mr. President, your committee on Preamble and Bill of Rights, to whom was referred resolutions No. 1, and 2, would most respectfully report that they have had the same under consideration, and return the same without recommendation.

(Signed) W. M. BICKFORD, Chairman."

Mr. Kennedy, of Missoula: Mr. Chairman, I move that the report of the committee just read be placed upon file for general orders.

The motion was seconded.

The chair put the motion and the same was declared carried.

Mr. Maginnis: Mr. Chairman, the committee on Executive Department beg leave to report as follows, and ask that the report be printed and recommitted, or if that is not the custom of the convention, that it be placed on the general file.

The clerk read as follows: "To the president of the convention, Sir, your committee to whom was referred the subject of the Executive Department, respectfully beg leave to submit the following as their unanimous report.

(Signed) MARTIN MAGINNIS, Chairman."

"Section 1. The Executive Department shall consist of a Governor, Lieutenant Governor, Secretary of State, Treasurer, State Auditor, and Superintendent of Public Instruction."

Mr. Maginnis: I do not know as there is any necessity for reading the report. The members can get at it better by having it printed and placed upon their tables.

The President: If there is no objection to dispensing with the reading of this report, it will be placed upon the general file.

Mr. Conrad, of Choteau: Mr. President, your committee on Printing beg leave to report.

The clerk read as follows: "Mr. President, your committee on Printing, to whom was referred the rules and order of business, have carefully examined the same, and find that they have been correctly printed.

(Signed) C. E. CONRAD, Chairman."

The clerk again read as follows: "Mr. President, the committee on Printing to whom was referred resolution No. 4, introduced by Mr. Watson of Fergus, in relation to the matter of publishing the laws, beg leave to report, that they have had the same under consideration and report it back without recommendation, believing that it is more proper for legislative action, than action by this convention.

(Signed) C. E. CONRAD, Chairman."

The President: It will require the action of this convention to have this report printed. What is the desire of the convention with reference to it?

Mr. Watson, of Fergus: Mr. President, I would desire to ask the indulgence of the convention to make a minority report, in addition to the majority report of the Printing committee. I have not been advised of anything in this committee, and it is not to my knowledge.

The President: Has the gentleman from Fergus a report prepared?

Mr. Maginnis, of Lewis & Clarke: I move that permission be extended to the gentleman to file a minority report, when he has it ready.

The motion was seconded.

The chair put the motion and the same was declared carried.

The clerk then read as follows: "Mr. President, your committee on printing have carefully compared propositions Nos. 1 and 2, and examined the same. and find them correctly printed.

(Signed) C. E. CONRAD, Chairman."

The clerk again read as follows: "Mr. President, your committee on labor request longer time before reporting on proposition number 7, relating to Chinese labor, also proposition No. 3, relating to the importation of laborers under contract, and resolution No. 17, relating to the protection of discharged employes.

(Signed) PETER BREEN, Chairman."

The President: If there be no objection this committee will be allowed further time to report.

The clerk again read as follows: "Mr. President, your committee on Labor make the following report and recommend the adoption of the same. The committee on Labor recommend: Sec. 1. That a bureau of labor and industry shall be established, to be located at the capital of the state, which shall be under the management of a commissioner who shall be appointed by the Governor, subject to the confirmation of the Senate, and shall hold his office for the same term as the executive state officers.

Sec. 2. The commissioner of labor and industry shall perform such duties and receive such compensation as may be prescribed by law, and it shall be the duty of the legislative assembly at its first session to prescribe such duties and compensation, and to pass such laws as may be necessary for the government, regulation and support of such bureau.

Section 3. That no person or persons convicted of a crime in the State of Montana, and while under sentence for the same, shall not be allowed to labor for any individual, company or corporation; neither shall the State have power to enter into agreement or contract with any individual, company or corporation to have convicts do any labor that will in any way compete with free labor.

Section 4. That no child under fourteen years of age shall by any corporation or person be employed in either mines or manufactories in this State.

Section 5. That on and after the adoption of this constitution by the State of Montana, it shall be unlawful for any company or corporation to pay their employes in any other way than in lawful money of the United States.

Section 6. That on and after the adoption of this constitution by the State of Montana, all state, county and municipal work shall be done by the day, and that eight hours shall constitute a legal day's work for all classes of mechanics and laborers in connection with the same.

Respectfully submitted,
PETER BREEN, Chairman."

The President: If there be no objection this report will be received, ordered printed, and placed upon the general file.

Mr. Witter, of Beaverhead: There was a portion of the committee that was not present at the principal session of the committee on Labor, and I will ask the privilege for them of filing a minority report, if they see fit after seeing the printed copy. They were not present at the principal meeting at all, and I think it no more than right, they should be allowed that privilege.

Mr. Burleight, of Custer: It seems to me, Mr. President, it would be a better plan to have the report recommended and give the minority an opportunity to file their report.

Mr. Hogan, of Silver Bow: Mr. President, the only two that were absent were Mr. J. R. Toole, who was called away on business and Mr. Graves. I think Mr. Graves saw the report before it was committed. I do not see the necessity of recommending it. We have met here two or three times, and that was all we could get. By giving these gentlemen leave to file a minority report, I think it is all that can be expected.

The President: Is there any objection to giving the committee leave to file a minority report? If not, such leave will be granted. I desire to state to the convention that the chairman of the committee on Legislative Departments has returned resolution number 16 stating that it was not within the province of that committee, and that it was in relation to the appointment of peace officers and private detectives, etc. If there be no objection that resolution will be referred to committee No. 5, on the Judiciary.

Mr. Buford, of Madison, sent up a resolution.

The clerk read as follows: "Resolved that the following be incorporated as a provision in the constitution and be properly numbered; no state, county or municipal officer shall hold office for more than two consecutive terms, except Senators and Representatives.

The President: What is the pleasure of the convention concerning the reference of this proposition?

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, I suggest that the resolution be divided, and that portion of it referring to state officers be referred to the executive committee, and the portion referring to city, town and county officers, be referred to the committee on cities, towns and counties.

The motion was seconded.

The chair put the motion and the same was declared carried.

The President: The proposition will be so referred.

Mr. Conrad, of Choteau, sent up a resolution which the clerk read as follows: "Resolved that the legislature shall provide for a State Examiner, whose duty it shall be to examine the books and accounts of all state, district and county officers in the state, at least once a year.

The President: If there be no objection this will be referred to committee No. 3 on Legislative Departments. The chair would state that it is now ready to announce committee No. 24 on Irrigation. The committee will consist as follows: Parberry, Meyers, Burleigh, Kohrs, Luce, Graves, Mitchell, Hobson, Marion, Buford and Chessman.

The President: The regular order of business has now been passed. Is there anything further to come before the convention?

Mr. Burleigh, of Custer: I move we adjourn.

The motion was seconded.

The chair put the motion and the same was declared carried, and the convention stood adjourned until Tuesday, July 16th, 1889, at 10 A. M.

NINTH DAY.

Tuesday, July 16th, 1889.

The convention was called to order by the president at 10 A. M.

The clerk called the roll.

Mr. J. R. Toole of Deer Lodge was excused.

The President announced that he had a letter from Mr. Gaylord, saying that the writer was quite unwell, and acting under the advice of his physician, and that he might not be able to be in attendance for two or three days.

Mr. Gaylord was excused.

The Chaplain offered prayer.

The clerk read the journal of the previous day.

Mr. Warren, of Silver Bow: Mr. President, I beg leave to present the following memorial.

The clerk read as follows: "I herewith submit to your honors, the following, which I trust will receive at your hands the unprejudiced and nonsectarian consideration it merits."

Mr. Burleigh, of Custer: Mr. President, I move to suspend the reading of the memorial and refer it to a committee.

The President: The chair is of the opinion that it requires a suspension of the rules to dispense with the reading of memorials and petitions.

Mr. Burleigh: I then move to suspend the rules.

The motion was seconded.

The chair stated the motion.

Mr. Rickards, of Silver Bow: Before that motion is put I would like to know from whom this memorial emanates.

The clerk stated that the memorial was signed "O. B. Whitford."

The chair put the motion, and a division being called for the same was carried by a vote of 46 to 7.

Mr. Toole, of Lewis & Clarke: Mr. President, the committee on Legislative Departments wish to report.

The clerk read as follows: "Mr. President, the committee on Legislative Departments have had under consideration resolution number 13, and have directed me to report adversely and recommended that it lie upon the table.

(Signed) J. K. TOOLE, Chairman."

The President: What is the pleasure of the convention concerning this report.

Mr. Maginnis, of Lewis & Clarke: I move that the resolution be laid on the table.

The motion was seconded.

Mr. Warren, of Silver Bow, requested that the resolution be read.

Mr. Toole, of Lewis & Clarke: That was the report of the committee, that it should simply be reported adversely. There was no report that it should lie upon the table. The accompanying report was written by the clerk and not signed.

The President: Being reported adversely, it is within the discretion of the convention whether it shall be printed or not.

Mr. Maginnis: I move that it go up on the general file.

The President: It will take that order unless otherwise disposed of. The printing of it is within the discretion of the convention. The chair would suggest to the gentleman from Lewis & Clarke that the report of the committee contains this clause, "that it do lie upon the table."

Mr. Toole, of Lewis & Clarke: As stated by me, that was the report as inserted by the clerk; it was not intended, and I ask that it be withdrawn.

Mr. Rotwitt, of Meagher, sent up report which the clerk read as follows: "Mr. President, your committee on suffrage, to whom was referred resolution No. 12 relating to suffrage, introduced by Allan R. Joy, have had the same under consideration, and do respectfully return it herewith with the recommendation that it do not pass.

(Signed) L. ROTWITT, Chairman."

The President: This report will take its regular course, if there be no other disposition to be made of it.

Mr. Middleton, of Custer: Mr. President, it seems to me that rule number 23 requires all matters placed on the general file to be printed, and my idea is that it is not desirable at all, that these matters that are reported adversely should be printed. I may not be right, but that is my understanding of it—that 100 copies of the file for each day shall be printed. As soon as a matter is placed on the file, it is practically ordered to be printed.

The President: I would call the attention of the gentleman from Custer to the first part of rule Number 23, in which it says, that if reported favorably, such propositions shall be printed; otherwise they shall be within the discretion of the convention, and thereupon shall be placed upon the general file. It is true that it may seem to be conflicting as the last clause states that 100 copies of the file shall be printed each day, but the language of the rule is not ambiguous.

Mr. Watson, of Fergus, sent up a report.

The President: The minority report of the committee on printing offered by the gentleman from Fergus, will now be read.

The clerk read as follows: "The report of the minority committee on printing, etc. The undersigned, a member of the committee on printing, etc., respectfully begs leave to submit the following report upon the resolution on the subject of the publication of the general laws, which was reported back by the majority of the committee with the recommendation that no action be taken by the convention. I would have been glad of the opportunity to present to the full committee such considerations that appeared to me to be important; but was engaged upon another committee and had no notice of a meeting of the committee on printing having been called. No reason is presented by the majority of the committee for their recommendation, beyond the intimation that they believe the subject to be one which ought properly to be left for the consideration of the legislature. Of course I think it may be assumed, that it is deemed by the majority as an unimportant matter, which the legislature may or may not act upon at its discretion. The undersigned much mistakes the general tone and opinion of this convention, if they shall be found to agree with the majority after full consideration shall have been had; and he objects on his own behalf, and in his judgment on behalf of a large majority of the people.

The President: If there be no objection this report will be received and placed upon the general file; but will not be printed except by order of the convention.

Mr. Calloway, of Madison: I desire to inquire whether the report of the majority was received, as it may be of some interest to this convention, I move that the minority report be ordered printed.

The motion was seconded.

The President: The clerk has raised the question whether the preamble shall be included in the printing, or whether that portion of it which would really constitute the report.

Mr. Calloway: Mr. President, if I am in order, it seems proper to have all the report printed.

The chair stated the motion.

Mr. Collins, of Cascade: I hope this motion will not carry. If we stretch the construction of the rules, so as to provide for the printing of the reports of the committees, then the general file will be lumbered with reports upon every conceivable subject from the committees of this house. I do not believe that a fair construction of the rules requires that any minority report of a committee shall be printed or shall be placed upon file. The rules, it seems to me, provide that any matter introduced relating to the constitution shall be read and referred to a committee, and that nothing shall be placed upon file except a favorable report of such committee. The committee considers everything that is placed before it and acts upon it, digests it and brings in its report. Now there is no committee of this body as I understand it, that is compelled to report adversely on any proposition. It can report adversely, but is not compelled under the rules to report adversely. It decides upon everything before it and reports, and that report it seems to me under the rules is the only thing that is placed upon the files, and is printed for the benefit of the convention. Now all these adverse reports can be brought before the convention when the report of the committee of the whole is placed before the convention.

I know this was the form of procedure in the convention of 1884, and I do not believe the rules of this convention are so materially changed, that this is not the proper construction of the present rule. Certainly if you allow every report to be placed on file and printed, and allow every member of this convention to make voluminous reports upon every subject before it, then we might as well make up our minds to stay here all summer, and possibly a little longer.

Mr. Middleton, of Custer: I heartily concur in the remarks made by the gentleman from Cascade. There can be no doubt that if matters of this kind go onto the general file, whether printed or not, that we have a six months job before us. Every one of these little matters will necessitate perhaps half a day or a day's time in their discussion; and, as has been suggested, if any member or a minority of a committee, are of the opinion, or desire to report in some other way, they can offer it in the way of a substitute or amendment to the report at the time the report is received; they can both go in together, so that if one or the other goes on the file, they will constitute but one report. Now the report of the majority on this resolution was adverse; that is not printed or ordered printed. Here is a report of one of a committee of five, which it is proposed to order printed and placed on the general file. I am certainly opposed to it and do not think it is a proper way to get at it. We never can make a constitution on earth in that kind of way.

Mr. Toole, of Lewis & Clarke: Mr. President, I think there is a misapprehension on what is intended by the general file, and I think the attention of the convention ought to be called to it at this time in connection with this particular subject. I do not believe it was the intention of the committee on rules in the formation of rule No. 23, that these several propositions that were reported back from committees of the convention should be reported back and numbered General Files No. 1, 2, 3, 4, etc., but that it was the intention of the committee that when a report was made favorable, that that proposition, whatever it was, should be numbered proposition No. 1, 2, or 3, as the case might be, and that it should be printed as such, and that it should be shown that it had gone to the committee of the whole, and that is what was meant by the sentence at the close of rule No. 23, that 100 copies of the general file shall be printed each day, so that something in the form of a calendar should be had for each day, showing that proposition No. 2 was reported on a certain day from a certain committee, and was then pending before the committee of the whole; that propositions No. 3, 4 and 5, should they be reported adversely as the case might be, had been reported back and were pending, and that from day to day, a calendar or general file should be printed, showing what business was then pending before the convention. There is nothing now for the information of this convention except to hunt up what are denominated general files, and get them together, by which we can ascertain what business is before the convention, whereas I think the intention of the committee on rules was that a general file or calendar, if you please, should be printed each day, showing what business was then pending before the committee of the whole, so that every member of the convention should be able to pick up that calendar or general file and ascertain at once what business was then pending before the committee; and as was suggested by the gentleman from Custer (Mr. Middleton), it was never designed to print anything except those reports which were reported back favorably, and if there should be an adverse report, or if there should be a report made without any recommendation whatever, that so far as the printing was concerned, it was to be in the hands of the convention, and it was considered that in the event that there was a minority report, or a favorable report in which every question was considered at length or liberally discussed, it should remain for the convention to say whether or not that report should be printed. The suggestion I made in the outset, I think ought to be passed upon in some sort of way, either by the president or the convention itself in the interests of the orderly dispatch of business.

Mr. Collins, of Cascade: Mr. President, to bring this matter directly before the convention I rise to a point of order that the motion is not in order under the rules.

The President: The chair would like to have the sense of the convention upon this subject.

Mr. Calloway, of Madison: I would like to ask for information from the gentleman as to what rule governs this motion.

Mr. Collins: The motion of the gentleman from Madison is that this entire report be placed upon the general file and printed as I understand it. Now rule No. 24 provides as follows: "All propositions and resolutions embracing matters proposed to be incorporated in the constitution, the printing of which is provided for in subdivision 23, and all other printing for the use of the convention shall be done under direction" etc. There is not a word that any report of a committee shall be printed, neither in that rule, nor in any other of the rules of our convention. My idea is that under a fair construction of the rules, nothing can be printed except by the consent of the convention, unless it be a majority report of a committee; but certainly under no rule, nor under any radical construction of a rule, can a report of a committee be printed, unless the house first says so.

Mr. Toole, of Lewis & Clarke: Mr. President, I desire to call the attention of the chair to rule No. 23, in which all points of order are submitted to the President of the convention. He can pass upon them in the first instance, and then if any member of the convention feel dissatisfied it can be submitted to the convention.

The President: The rule, I believe, is that the chair may ask the consent of the convention, if he is himself in doubt upon any question. The chair desires to give the widest liberality to the minority, and unless it is insisted upon, the chair would prefer that the convention should decide the point itself.

Mr. Collins: I withdraw the point of order, Mr. President.

The President: The point of order is withdrawn.

Mr. Rickards, of Silver Bow: I would like to ask for information, what was done with the majority report that was considered yesterday.

The clerk announced that the report of the majority of the committee was placed on general orders.

The President: I would state to the gentleman from Silver Bow, that the report was not ordered to be printed.

Mr. Callaway, of Madison: Mr. President, I understood from the chair that the majority report had been ordered printed; and I so understood it in making my motion; if that report has not been ordered printed, I shall certainly ask consent to withdraw my motion.

Mr. Collins, of Cascade: Mr. President, I believe this matter will come before the convention every day, and I would like to ask the President to give a decision on the matter.

The President: The chair is of the opinion that no report, except the report of the committee which necessarily is a majori' report. can be ordered printed. If it is a favorable report it will take its regular course and be ordered printed; if it is an adverse report, it can only be printed by order of the convention.

Mr. Collins: Is it the view of the chair that not the report itself; but the propositions and resolutions which they recommend shall be adopted or rejected shall be printed?

The President: The proposition or resolution itself, of course, if reported favorably shall be ordered printed.

Mr. Rickards, of Silver Bow: I do not know whether all this discussion is in order or not; but since the gentleman from Cascade (Mr. Collins) raises the question, it does appear to me that a minority report should be treated with as much deference and respect as the majority report. I do not believe that the sense of this convention would order otherwise, and as I understand rule No. 23, or subdivision No. 23, as it is called, the printing of the report was that part of it to be embodies in the constitution. That was the part that was to be printed at the discretion of this convenion.

The President: (reading) "The majority report if favorable shall be printed."

Mr. Rickards: But the minority report can be printed at the discretion of this convention.

The President: Of course the minority report can be taken up and printed. The convention can order anything done; but according to this rule it would not be in order at this time.

Mr. Maginnis: Mr. Chairman, in case of a majority report, as I understand, you simply report the matters that the committee reports, not the report itself; otherwise I should be very strongly of the same opinion as the gentleman from Silver Bow. The rights of the minority in this convention are just as sacred as the rights of the majority, and if there was but one single man who felt himself aggrieved, or his sense of justice abused, I would be in favor of giving him every privilege, going so far as to give him the same right to print and put his views upon the records of this convention as all the rest of the members of the convention. But if the rule stands as interpreted by the chair, that each will have to appeal to the convention, I see no necessity for further action.

Mr. Toole, of Lewis & Clarke: Mr. President, it does not seem to me that there should be any difficulty in the interpretation of this rule. There is nothing in rule 23 that authorizes the report itself, whether favorable or unfavorable, to be printed, as a matter of course or otherwise. It refers simply to the propositions. All the propositions and resolutions embracing matter likely to be incorporated in the constitution, reported by a standing or special committee, shall be read and reported, and if reported back favorably, not such report but such resolution or proposition shall be ordered printed; otherwise the printing thereof shall be within the discretion of the convention, and thereupon the same shall be placed upon the general file kept by the clerk; that is the general file which I suggested a moment ago; not the printing of the proposition itself at length, but the general file or calendar, whatever you may be pleased to call it; but it especially provides that not the report but the resolution or proposition shall be printed.

The President: That principle the chair holds to be correct.

Mr. Goddard, of Yellowstone: Mr. President, I desire to call the attention of the committee on towns and counties to the resolution which I introduced in relation to county and precinct officers, four days ago. No report has as yet been made.

The President: Can the chairman of that committee give the gentleman any information?

Mr. Brown, of Choteau: I would say, Mr. President, that the time in which the committee was given to report has not yet elapsed.

The President: The gentleman explains that the time in which the committee was given to report has not yet elapsed, and that the committee has further time in which to make a report on the proposition.

Mr. Eaton, of Park: I desire to introduce the following resolution and move its adoption.

The President: The clerk will read the resolution offered by the gentleman from Park.

The clerk read as follows: "Whereas under the provision of the enabling act of congress, the employes of this convention have been limited, defined and designated, so far as the liability of the general government is concerned to pay the same; and whereas this convention has employed clerks and pages largely in excess of the requisite and necessary number required; and whereas the state of Montana will be called upon to pay such unwarranted expenditures of money; and whereas to reduce the force of the employes of this convention would not impede or retard the labors of this body,

Therefore be it resolved that two pages, three clerks, and the assistant sergeant at arms, be and they are hereby discharged.

The motion was seconded by Mr. Robinson.

The President stated the question.

Mr. Eaton, of Park: Mr. President, in support of that resolution, I simply desire to say that I believe that the extra persons or the persons named are entirely unnecessary to the orderly and speedy dispatch of the business before this body.

Mr. Toole, of Lewis & Clarke: I rise to a point of order, and beg to refer you, sir, to rule 23. The point of order is that these resolutions should be referred to the proper committee without debate.

The President: I would say that the chair would suggest to the gentleman from Lewis & Clarke, that rule 22 refers as the chair understands it to propositions and resolutions relating to matter to be incorporated in the constitution. This is a matter that is not concerned in the constitution, and is not a matter to be incorporated in the constitution, and hence I decide that the point of order is not well taken.

Mr. Eaton, of Park: Continuing, Mr. President, I simply desire to close by saying, that these employes being as I understand it not at all necessary, and solely a burden and expense, shall though it be, to the future state of Montana, I see no reason why they should be continued here under pay. I therefore move that resolution and I hope it will prevail.

Mr. Middleton, of Custer: Mr. President, I had the honor last winter to be a member of one branch of the legislature, and from a political point of view was in the minority, or rather with the minority. In each house of the legislature which was entitled according to law to identically the same number of employes and attaches that we are entitled to in this convention under the enabling act of congress, a resolution was introduced early in the session in both houses, that five additional clerks be employed in each house, which resolution was adopted; so that in each house of the legislature, one composed of twelve members and the other composed of twenty-four, they had the same number of clerks that we have in this convention of seventy-five members. The people of the Territory of Montana did not complain that that was an unreasonable number of clerks. Here is an unwieldy body of seventy five men. A large amount of clerical work is to be done, and from day to day as we progress that clerical work will be increased. It seems to me that this resolution is certainly uncalled for, that it indicates a disposition not in harmony with the sentiments of this convention. I have no hesitation in saying that I believe one of the first things that the legislature of the state of Montana will do, when it has convened, is to pass a resolution or a law appropriating sufficient money to pay these extra attaches. We have here, it is true, three pages more than we had in either house of the legislature; with that exception the number of attaches of this convention is identical with the number of attaches of one house of the last legislature. Now why is it that our friend from Park has become so parsimonious as to intimate by resolution or otherwise that we do not need these clerks or employes in a convention like this, when his own people last winter saw fit and deemed it necessary to use as many attaches in each house of the legislature. I am certainly opposed to the resolution. I do not believe it is the sense of this convention. I do not believe that it is a party measure; I do not believe it ought to be looked upon in that way. But I certainly am opposed to anything in the nature of such a resolution, and I believe the time will come within ten days, when we will find that it is absolutely impossible to get along with the number of clerks that we have now; that it will be necessary to employ other clerks and perhaps stenographers, in order that this convention will not last all summer. I certainly hope the resolution will not prevail.

Mr. Robinson, of Deer Lodge: Mr. President, my views upon this proposition have been expressed to this convention heretofore, too thoroughly to require any reiteration, but I certainly stand in and endorse the proposition of the author of this resolution, for the reason that when I look around me, and see what these pages and clerks are doing, and what is required of them, I see the entire utter uselessness of them. I do not see any use for retaining them. It is wholly immaterial to me as a member of this convention what the last legislature did or did not do, that is no guide for us; they may have been a lively body of men requiring a dozen additional clerks and pages; but we can see—from the effect upon this convention, we can see its requirements, and we can see that no more pages are required than these two boys that we have here. We can see too well that these extra clerks are not employed. They are drones; they are doing nothing worth speaking of, if anything at all. Then irrespective of what the last legislative assembly did or did not do we can see as a practical problem that we have no use for these supernumeraries. Therefore, Mr. President. I am in favor of the motion prevailing.

Mr. McAdow, of Fergus: Mr. President, it seems to me that this convention has rather got into a penurious and parsimonious mood. I do not see any necessity why this convention should take up so much time in trying to cut down the wages of a few pages and clerks. Now I think it is necessary, if we want to get to work and do our duty, that these pages and clerks will be required to wait upon this convention. This convention meet here, and they refer resolutions after resolutions that are offered, to committees that are appointed. These committees are composed of intelligent gentlemen, and are supposed to take care of their part of what it is intended they shall do; but these resolutions are shoved in upon them, instructing them and suggesting to them to do such and such a thing. Now if I understand the business of this convention, we expect to go into committee of the whole, and act upon the reports of these committees, and sir, if it is necessary, and these gentlemen want to make their amendments, then is the proper time to put in the amendments and have them discussed. All these resolutions that are thrown in here have to be printed. And, while I am in sympathy with the gentleman from Fergus in regard to his resolution, and believe it is right, at the proper time that can be put in as an amendment and we can get through with this work, and this $20,000 will pay for the services of the clerks; but if it should go beyond that, if they are afraid that the people of Montana will not pay any part of this extravagance as they call it, let the members of this convention chip in a few dollars and settle this whole matter. If we go on as we should do, and do our work, these attaches will certainly be employed, and I would now like to see us get down to work if possible, and attend to our work, and I think we will have no trouble about money.

Mr. Eaton, of Park: I would simply like to ask one question of the gentlemen who have spoken in opposition to this resolution. I would like to appeal to the good sense of this convention, and ask them what possible use this body has for an assistant sergeant at arms. I cannot conceive of any possible function that that officer has been called upon to perform since this convention met. Now the question of extravagance and the question of parsimony and this, that and the other does not pertain to this question. It is simply a practical question of what we need and I believe we are perfectly competent to decide what officers we need without reference to the respective bodies of the legislature, or what they did or did not have. I think that our own knowledge is sufficient. With reference to the other questions which were indirectly touched upon, I do not propose to enter upon them. It is certainly beneath my dignity at least to follow up that particular line of argument. The question at issue is just exactly what clerks we need for the actual transaction of business here, nothing more, nothing less.

Mr. Toole, of Lewis & Clarke: Mr. President, if there is any time in the world when we will need the extra assistance which has been provided here, the time is certainly approaching if it has not already arrived. It is fair to say that during the last week which was the first week of this convention, the business of this convention has been in such a condition as that perhaps this assistance was not needed, but at this time the committees have under consideration certain business which has been presented to this convention and they are each at work making reports; and the time is rapidly approaching when the convention will be in session perhaps from four to six or eight hours per day for the consideration of the general business of the convention which will embrace every proposition submitted to this convention and then it will be that the pages which have been authorized by the rules of this convention, will certainly be needed for the aid and assistance of members who will not be as they now are in the different committee rooms considering these propositions; but who will be in this convention where their services and attention will be required. And I undertake to say to the gentleman from Park, that the assistant sergeant at arms will perhaps have enough employment in this convention from this time on to the day of its adjournment. The assistant sergeant at arms may be sent into the city or elsewhere at the call of the house. It will be necessary at least that the assistant sergeant at arms shall be at the door and that his services will be required in the performance of such other duties as will necessarily be required by this convention. I do not believe, Mr. President, that the people of this territory or of the proposed state of Montana would expect that seventy-five members who have come here to serve their constituents in the great work of making this constitution should be compelled to stay here without the necessary aid and assistance of these employes. They came here once willingly upon the call of the legislative assembly, and for four weeks they performed these duties that are now devolving upon this convention without a dollar of compensation. I think the people of this territory are quite content that that sort of service shall never be rendered without the necessary aid and the necessary compensation for that purpose. I believe, sir, that this assistance is necessary and I believe that the time has now arrived, when from now on it will be necessary to have here every particle of the assistance which we have provided for by the resolution of this convention, and for that reason, sir, I am opposed to the motion of the gentleman from Park.

The President then put the question, and a division being called for by Mr. Eaton, the chair announced that there were 14 voting in the affirmative, and 41 in the negative, and the motion was declared lost.

Mr. Collins, of Cascade: I move that the convention adjourn.

The motion was seconded, was declared carried, and the convention stood adjourned until Wednesday, July 17th, 1889, at 10 o'clock A. M.

ADJOURNED.

TENTH DAY.

Wednesday, July 17th, 1889.

The convention called to order by the President at 10 A. M.

The clerk called the roll.

The chaplain offered prayer.

The clerk read the journal of the previous day.

Mr. Hickman, of Madison: Mr. President, I have a petition from the citizens of Madison County, which I would like to have referred to the committee on Suffrage.

The President: The memorial offered by the gentleman from Madison will now be read.

The clerk read as follows:

"To the Honorable Members of the Constitutional Convention of Montana.

We, the undersigned, adult citizens of Montana desiring that our women citizens may enjoy all the privileges of statehood that our men will, would respectfully pray and petition your honorable body to incorporate in the state constitution about to be formed an equal suffrage provision.

(Signed) EDWIN COOLEY, and 30 others."

The President: If there be no objection this memorial will be received and referred to the committee on Suffrage.

Mr. Dixon, of Silver Bow, sent up report of the Judiciary committee.

The President: The report of the chairman of the Judiciary committee is presented and will be read by the clerk.

The clerk read as follows: "Report of the Judiciary committee on resolution No. 16. Mr. President, the judiciary committee to whom was referred resolution No. 16, relating to the appointment of special deputies, detectives, etc., report that they have considered the same and herewith report it back adversely, and recommend that it be not incorporated in the constitution, all of which is respectfully submitted.

(Signed) W. W. DIXON, Chairman."

Mr. Browne, of Choteau, sent up the following report which was read by the clerk: "Mr. President, your committee to whom was referred resolution No. 18 introduced by Mr. Buford, report that they have had the same under consideration and respectfully return same with the recommendation that it do not pass.

(Signed) DAVID G. BROWNE, Chairman."

Mr. Rickards, of Silver Bow: I wish to ask what committee this is, Mr. President?

The President: The committee on city, town and county organizations.

The clerk read a report from the same committee as follows: "Mr. President, your committee, to whom was referred resolution No. 9 introduced by Mr. Kennedy, beg leave to report that they have had the same under consideration, and respectfully return the same with the recommendation that it do not pass.

(Signed) DAVID G. BROWNE, Chairman,
Committee on county, town and city organization."

Mr. Callaway, of Madison, sent up the following report which was read by the clerk: "Mr. President, your committee on boundaries, public lands and homestead exemptions, beg leave to report and respectfully recommend that the following provisions be incorporated in and embrace a part of the constitution.

Article 1—Boundaries.

Section 1. The boundaries and jurisdiction of the State of Montana shall be as follows, to-wit: Commencing at a point formed by the intersection of the 27th degree of longitude west from Washington with the forty-fifth degree of north latitude; thence due west on the forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south, along the thirty-fourth degree of longitude, to a point formed by its intersection with the crest of the Rocky Mountains; thence following the crest of the Rocky Mountains northward till its intersection with the Bitter Root mountains; thence northward along the crest of the Bitter Root mountains to its intersection with the thirty-ninth degree of longitude west of Washington; thence along the thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along that boundary line of the 27th degree of longitude west from Washington; thence southward along the 27th degree of longitude, to the place of beginning.

The President: This report will be referred to the printing committee, and ordered to be printed if there be no objection and placed on file.

Mr. Rotwitt, of Meagher, sent up the following report which was read by the clerk: "Mr. President, your committee on rights of suffrage, and qualifications to hold office having had such subject under consideration, respectfully submit and recommend its adoption."

The President: This report will take the usual course and be ordered printed if there be no objection.

Mr. Callaway sent up a further report which was read by the clerk as follows: "Mr. President, your committee on boundaries, public lands and homestead exemptions, to whom was referred resolution No. 8 introduced by Mr. Luce, beg leave to report that they have had the same under consideration, and respectfully recommend that the same in substance and in due form be incorporated as a provision in the constitution.

(Signed) CALLAWAY, Chairman."

The President: This report will take the usual course if there be no objection.

Mr. Kohrs, of Deer Lodge, sent up the following report which was read by the clerk: "Report of committee No. 16. We, your committee on agriculture, manufactures, commerce and immigration, beg leave to submit the following report. We have diligently inquired into the various means and ways which may have a tendency to promote the different interests above named, and are of the opinion that there should be established a bureau for statistics on agriculture, manufacture and commerce (to which may be added the branch of labor) and we herewith recommend the following sections to be adopted in a separate article of our constitution:

Section 1. A bureau of agriculture, manufacture and commerce shall be established to be located at the capital of the State, which shall be under the management of a commissioner who shall be appointed by the governor and confirmed by a majority of the senate and hold his office for the term of four years from the day of confirmation by the Senate.

Section 2. The commissioner of agriculture, manufactures and commerce shall perform all such duties and receive such compensation as may be prescribed by law, and it shall be the duty of the legislative as-

[illegible] at its first session to prescribe such duties and compensation and to pass such laws as may be necessary for the government, regulation and control of said institution.

Signed [illegible]

The President: This report will be referred to the printing committee to be printed.

Mr. Luce, of Gallatin: Mr. President, I offer the following resolution.

The President: The resolution offered by the gentleman from Gallatin will be read by the clerk.

The clerk read as follows: "Resolved, that the legislative assembly shall have the power to limit by law the number of retail dealers in liquors, wines, ales and beer, and any and all other intoxicating liquors or drinks in the counties, cities and towns of the State, in proportion to the number of inhabitants of such counties, cities and towns, respectively, and to prescribe the qualifications of persons who may so retail the same therein, and to prescribe all rules and regulations for the sale thereof.'

The President: The gentleman offering this resolution asks that it be referred to committee No 7. If there be no objection, it will be so referred.

The clerk read the following resolution, also offered by Mr Luce, "Resolved that gambling of any kind whatever shall not be deemed a legitimate trade, occupation, profession or business, and may be prohibited by appropriate legislation'

The President The gentleman also requests that this resolution be referred to committee No 7 If there be no objection it will be so referred.

Mr Browne, of Choteau, offered the following resolution, which was read by the clerk as follows· "Resolved that the legislative assembly of the state of Montana shall have no power to reduce or increase the fees or salaries of county or state officers during the terms of office for which they are elected"

The President If there be no objection, this will be referred to committee No 10 on city, county and town organizations.

Mr. Hammond, of Jefferson, offered the following proposition which was also read by the clerk as follows "Proposition relating to Gambling. Article—, Section—. No games of cards, dice, billiards, pool or any form of gambling whatsoever shall be permitted or allowed to be carried on in any building or room where intoxicating liquors are sold, or exposed for sale"

The President If there be no objection, this proposition will be referred to committee on miscellaneous provisions

Mr Loud, of Custer, sent up the following resolution which was read by the clerk as follows· "Corporations other than municipal Resolved that the Governor shall upon his qualifying and entering upon the duties of his office under this constitution, appoint by and with the approval of the Senate, a Board of Railroad Commissioners, to consist of three members whose compensation and duties shall be as prescribed by law"

The President: If there be no objection, this resolution will be referred to committee No. 12.

The clerk read the following which was also offered by Mr Loud: 'Corporations other than municipal. Resolved that no railroad, express, or other transportation company, doing business in the state of Montana, shall pool or enter into any arrangement or agreement with any other similar corporation or company whereby the rates and charges for the transportation of passengers or freight by such companies or corporations, shall be removed from natural competition, and the legislature is required to pass laws for the enforcement of this prohibition."

The President If there be no objection, this resolution will be referred to committee No. 12.

Mr. Middleton, of Custer: Mr. President, I believe there was no disposition made the other day of resolution, which I think was No 7, relating to the employment and compensation of the stenographer, and I move you that that resolution be now referred to a special committee of seven to be appointed by the chair.

The motion was seconded.

The [illegible] is moved and seconded, that resolution No. 7, offered by the gentleman from Cascade (Mr. [illegible]), be referred to a special committee of seven to be appointed by the chair.

The chair put the question, and the same was declared carried.

The clerk read the following communication:

"Helena, Montana, July 10th, 1889.

Hon. W. A. Clark, President,

Constitutional Convention, Helena, Montana.

Dear Sir:

I herewith tender my immediate resignation as Assistant Chief Clerk of the Constitutional Convention of Montana.

Respectfully,

(Signed) WILLIAM TAYLOR."

The President: If there be no objection, this resignation will be accepted.

The President: What is the pleasure of the convention concerning the filling of this office.

Mr. Burleigh, of Custer: I think, Mr. President, the position should be filled. I think that we have arrived at that stage in the convention when we should have a much larger force than we have now, so as to enable the convention to transact its business and get home. This thing of economy that has been preached here, so far as the force of clerks is concerned is the sheerest nonsense in the world I am in favor of increasing the force here, to a sufficient extent to enable the convention to go on and complete its work with the utmost dispatch consistent with the due order which should attend our deliberations. I move that the position be filled forthwith

The motion was seconded

The chair put the motion and the same was declared duly carried.

The President Are there any nominations for the office of Assistant Clerk?

Mr. Mayger, of Lewis & Clarke Mr President, there is a lady in Helena, who is looking for a position of that kind and who came before this convention before, for a position as clerk, but she had another position offered her and withdrew her application before this convention. I will place her name in nomination. She is a good stenographer, and I think will make a good Assistant Clerk I nominate for that office Miss Jennie Merriman

The motion was seconded.

Mr. Bickford, of Missoula. I move that the nominations be closed.

The President As many as are in favor of electing Miss Merriman to the office of Assistant Clerk, will say aye and those opposed, no.

The motion was carried and Miss Merriman was declared elected to fill the position of Assistant Clerk.

Mr. Middleton, of Custer: Mr. President, I move you that we now go into committee of the whole.

Mr Burleigh, of Custer: Mr. President, I hope we may be allowed one day more to go on and finish our committee work I am satisfied that if the committees are allowed one day more, they will be ready to report tomorrow, and it seems to me that if we break in here by going into committee of the whole, it is really interfering with and obstructing the progress of the convention and its work, and I do hope that we may be allowed one day more in which to go on and complete our work in the different committees. After that I shall not interpose any objection to going into committee of the whole

The chair put the question on the motion of the gentleman from Custer (Mr. Middleton)

Mr. Burleigh called for a division, and the chair announced the motion lost.

Mr Callaway, of Madison: I move that the convention do now adjourn until tomorrow morning, and that the time be fixed at 9 o'clock.

The motion was seconded.

The President: The motion is that the time to which the convention shall adjourn, shall be fixed at 9 o'clock tomorrow morning

Mr. Warren, of Silver Bow Mr. Chairman, I have been requested to make an application for Mr. H B Blackwell, Secretary of the American Woman's Suffrage Association, for the privilege of addressing the convention.

The President· If the gentleman from Silver Bow will allow me, the motion is not to adjourn, but to fix the time to which the convention shall adjourn.

Mr. Joy, of Park: Mr. President, I would like to make an amendment to the motion of the gentleman from Madison (Mr Callaway) that we adjourn to meet at 2 o'clock this afternoon.

The motion was seconded.

The President: It is moved and seconded that the motion of the gentleman from Madison be amended and that the convention take a recess until 2 o'clock this afternoon.

Mr. Carpenter, of Lewis & Clarke: Mr. President, it seems to me that if we are to go into committee of the whole, it is very important that the committees should be prepared for the work of this convention. It seems to me to be much better to adjourn regularly from day to day until this business comes before the committee of the whole, then, if it is necessary· to have an afternoon session, we can have it. At present I think it is to the interest of the convention not to have an afternoon session; it would interfere with the work of the committees

The chair then put the motion and the same was declared lost.

The President: The question is now upon the original motion that the hour be fixed at 9 o'clock tomorrow morning.

The chair put the motion to fix the hour for adjournment at 9 o'clock the following morning, and the same was declared carried.

Mr. Warren, of Silver Bow: I move, Mr President, if it be in order that on the conclusion of the call of the order of business, Mr. Henry B. Blackwell, Secretary of the American Woman's Suffrage Association, be invited to address the convention.

Mr. Sargent, of Silver Bow, seconded the motion.

The President: It is moved and seconded that after the order of business is exhausted, that the Hon. Henry B. Blackwell of Massachusetts, be requested to address the convention.

Mr. Eaton: I desire to offer an amendment to the motion.

The President: The gentleman from Park offers an amendment to the motion of the gentleman from Silver Bow, that the Hon. Henry B. Blackwell be invited to deliver an address in this hall at 8 P. M., today.

The motion was seconded.

Mr. Robinson: Mr. President, I move to lay the motion and the amendment on the table.

The motion was seconded.

The chair put the question and there being a call for the Ayes and Noes, the chair announced that the vote stood as follows:

Ayes: Burns (Edward), Craven, Gillette, Graves, Hartman, Haskell, Hatch, Hershfield, Joy, Joyce, Kennedy, Kohrs, Luce, Marion, Mayger, Mitchell, Muth, Robinson, Rotwitt, Schmidt, Watson, Whitehill, Winston, Witter—24.

Noes: Aiken, Bickford, Brazleton, Breen, Browne, Buford, Bullard, Burleigh, Burns (A. F.), Burns ·(A. J.), Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Courtney, Dixon, Durfee, Dyer, Eaton, Fields, Gibson, Goddard, Hammond, Hickman, Hobson, Hogan. Kanouse, Knippenberg, Knowles, Loud, Maginnis, Marshall, Middleton, Myers, Parberry, Ramsdell, Reed, Rickards, Sargent, Stapleton, Toole, Warren, Webster, Mr. President—48.

The President: The question now recurs upon the amendment offered by the gentleman from Park.

Mr. Warren, of Silver Bow: In connection with that matter, I will state that it was the intention of Mr. Blackwell to leave at 3:15 this afternoon for Washington Territory; he will only detain the convention for 20 or 30 minutes. He will be brief in his remarks, and I think it is a matter we should hear, instead of having the lecture delivered to people this evening, who will probably take but little interest in it, and who are not members of the convention. If this amendment carries, of course Mr. Blackwell will be unable to speak.

Mr. Eaton, of Park Mr. President, I have no desire to seem lacking in courtesy on this or other similar propositions; but it seems to me if this convention is unable to spare the time necessary to listen to a petition from one of our citizens, as was seemingly the case yesterday, when a petition was referred to a committee without having been fully read, that following that precedent, we can spare no time—none of our valuable time—for the purpose asked, and therefore I am opposed to this resolution.

Mr. Robinson, of Deer Lodge. Mr. President, the objection that I entertain to a proposition of this character is that I am opposed to this convention even dignifying the applications of men from outside. We do not want such propositions as this or any other We are perfectly capable of managing our own affairs here without these people coming from the outside and wanting to intrude themselves upon our attention. I want to treat them the same way that this convention treated those Chicago bankers the other day, and show them that we can take care of our own affairs. We can take care of our own affairs without them, and we have something else to do. Our time is all employed without such interference from them, and for that reason, Mr President, I moved to lay the whole proceeding on the table. I am opposed to dignifying these applications even with the respectful vote of the convention.

Mr. Knowles, of Silver Bow· I wish only to say a few words. There are men undoubtedly in this convention, as there are everywhere, that are afraid that they will get some light from the outside; they are afraid that some information will come to them from some source. Now there are some people who are very selfish in this respect about Montana. and about her productions and her people and it is a wonder to me that they have read any literature from any other country than that which is published in Montana. Now in regard to this question of Woman Suffrage. It is a question that has a respectable following in the east, men of prommence and influence all over the country are interested in this subject, and Mr. Blackwell is a man of character and standing, a man that has been before the public on this question for 20 years or more, and if he has anything to say upon this question, let us hear it. It is not necessary we should adopt his views. It is not necessary that the distinguished gentleman from Deer Lodge should even listen to them; we can excuse him from this convention if he does not wish to hear them. But there are some here that would like to hear what is to be said upon this question. If there is any new light to come from any source, let us arise and meet it. Let us not by a sneer or by narrowness, or by wrapping ourselves up in the opinion that Montana knows everything she needs to know, and close the door to everything that can come from the outside. I am in favor of hearing what the gentleman has to say on this subject.

Mr. Whitehill, of Deer Lodge: I am a little surprised at the insinuation of Judge Knowles, that the members of this convention do not wish to hear anything on this subject. That was not the point. A few days ago a noted temperance lecturer came to this town, and he kindly invited this convention to go to a public place and hear him. Many of the members accepted that invitation. Now if we are to listen upon this question, and invite lecturers before this convention, I am certain there are other interests here, besides woman suffrage, and if we invite gentlemen here to lecture to us upon that subject, the people who are interested in our mines —I understand that question will come up—there are gentlemen, eloquent speakers in this Territory who would like to be here, and who are not members of this convention; and in regard to corporations, railroad corporations. If we start this business by inviting people who are interested in what this convention does, we will spend our whole time in listening to gentlemen who desire the privilege of addressing this convention. Now if this gentleman desires to address this convention, let him appoint a time and place in this city, where all the members can go and not take the time of the convention in listening to him. Then there is the question of the precedent it establishes. The gentleman has no more right to ask our time than any othe[illegible]ne who is interested in the passage of any of the propositions which [illegible] before this convention, and for that reason, I am opposed to this mot[illegible] If he is invited, I shall be glad to hear him, for I am pleased to confe[illegible] [illegible]hile I am not much taken with this principle of woman suffrage, still I would like to hear an able exponent; but I object to his taking up our time here in asking us to invite him here, and I will go as I say, if he will appoint a place on the outside.

The chair then stated the motion.

The ayes and noes were called for.

Mr. Conrad, of Choteau, asked if it was compulsory upon the members to be present at 8 o'clock in the evening, when Mr. Blackstone would address the convention, and the chair informed the convention that the attendance was not necessarily compulsory.

The ayes and noes being called, the chair announced that there were 55 voting in the affirmative and 13 voting in the negative. The vote stood as follows:

Ayes: Aiken, Bickford, Brazleton, Breen, Browne, Buford, Bullard, Burleigh, Burns (A. F.), Burns (A. J.), Burns (Edward), Callaway, Cardwell, Carpenter, Chessman, Collins, Conrad, Cooper, Courtney, Dixon, Durfee, Dyer, Eaton, Fields, Gillette, Goddard, Graves, Hammond, Hershfield, Hickman, Hobson, Hogan, Joyes, Kanouse, Knippenberg, Knowles, Kohrs, Loud, Luce, Maginnis, Marshall, Mayger, Middleton, Muth, Myers, Parberry, Ramsdell, Reek, Rickards, Sargent, Schmidt, Stapleton, Toole, Webster, Witter, Mr. President—56.

Noes: Craven, Cauby, Hartman, Joy, Kennedy, Mitchell, Marion, Robinson, Rotwitt, Winston, Whitehill, Watson, Warren—13.

Absent: Gibson, Gaylord, Haskell, Hatch, McAdow, J. R. Toole.

The chair then announced the motion carried, and the Honorable Henry B. Blackwell was thereby invited to address the members of the convention at 8 o'clock in the evening.

The President then announced that he was in receipt of a note from Mr. Blackwell, saying that he would accept the invitation for 8 o'clock the same evening.

Mr. Eaton, of Park, suggested that the galleries should be thrown open to the public in the evening.

Mr. Collins, of Cascade, suggested that the floor of the house be open as well as the galleries.

Mr. Robinson, of Deer Lodge: This is the action of the convention, and it is the action of the convention as a body. This hall is for the purpose of the deliberations of this convention, and I do not see under the rules of the house, how the privileges of this floor can be extended to outside parties. Under the rules of the house I do not see how it can be without suspending the rules, for they prescribe who shall be entitled to a seat upon the floor of the convention. It is the action of the convention and the members will be in the convention assembled as the convention. If that is the case, I do not see how the rules can be transgressed by inviting other parties upon the floor.

Mr. Goddard, of Yellowstone: I do not think it would be advisable to give the floor of the convention to outsiders. I suppose every member of this convention will be here and in his seat. There is very little room outside of that occupied by the members. I beg the pardon of the gentleman from Deer Lodge. When I say that every gentleman will be present, I would qualify that by saying that every member except the gentleman from Deer Lodge will be here.

Mr. Robinson, of Deer Lodge: I move we adjourn.

The motion was seconded.

The President: There is an invitation here, which the clerk will read with the permission of the convention before the motion to adjourn is put.

The clerk then read a communication from Howard J. Lowry, Photograhper, Pittsburg Block, Helena, Montana, inviting the members of the convention to call and have their photographs taken, so that the photographer might arrange them in groups for the purpose of preserving as an historical memento of the occasion, photographs of the different members.

The chair then put the question on the motion to adjourn, and the same was declared carried.

The following is the address of the Hon. Henry B. Blackwell, delivered before the members of the constitutional convention on Wednesday evening, July 17th, 1889, at 8 o'clock.

Mr. President and Gentlemen of the Convention:

I should not presume to be here to address you upon this important question, if I were not commissioned to do so by the American Woman's Suffrage Association, of which I am Secretary; nor would the Association have commissioned me to do so, if it had not been in their judgment, a period of unusual and critical importance, not only to the cause which I am here to advocate, but to the country to which we all belong. It is a very impressive and a very novel spectacle to see a great territory, extending almost from the Mississippi River to the Pacific Coast, moving with one common purpose from territorial conditions into those of statehood; and we feel in the east that that change is one of the very greatest social and political importance, destined to have very grave consequences upon the future legislation of this country; and we feel that it is very important that in the organization of these new states, you will not put up those barriers against the growth of public opinion, that in our eastern states have made it almost impossible in many cases for the legislatures to reflect the public will.

For I need not remind you gentlemen, that when you organize your state constitution, if you, place in that constitution, in the clause upon suffrage the word "male" as a limitation, unless you accompany it with some other provision, you put an almost insuperable barrier against any future step in the direction of equal suffrage for all citizens without regard to sex. Those barriers exist in the eastern states because they were organized, many of them, more than 100 years ago. But you have been hitherto free from those barriers, ever since the Territory of Montana was organized your legislatures have had the right by the enabling act of congress to extend suffrage at your pleasure to all citizens irrespective of sex. You have not seen fit to do it, simply because no large body of your citizens has asked for it, and we—our association—have never come here to ask for it because we are not desirous of interfering with the institutions of the different states and territories. But when you organize your state, we do desire—we do most deeply desire—that you should feel it possible to take the great step in social and political progress which woman suffrage means, and that you should put into the body of your constitution, a clause reciting that all citizens 21 years of age, of sound mind, not convicted of crime, shall have the right of Suffrage irrespective of sex. But if, gentlemen, in your judgment, public sentiment is not ripe for this, if in your judgment your constituents are not at present ready for that change, then we ask you simply to continue in your state constitution, the same political status of the women of Montana, which they have occupied ever since you were a territory—in other words—that when you come into the full exercise of your own rights as a sovereign state in this Union, you shall not accompany that act by putting a barrier that did not before exist, in the way of the intelligent women of Montana Territory, if they ever desire and express a general demand for suffrage. I may be told, that if such a desire is expressed, a constitutional amendment may be submitted, and that the people may vote upon it and change it That in the abstract is true; but practically as you know, gentlemen, without a political party organized upon the question, it is almost impossible to obtain the verdict of the people, because it is difficult to obtain their attention to a question of this character; and I will simply allude to our experience in the territory of Colorado when it became a state in 1876. It was provided by the constitutional convention of Colorado, that the following legislature should submit a constitutional amendment to the people, and it was so submitted; and at an expense of several thousand dollars a number of eminent speakers were secured who gave their services and visited almost every organized precinct in that state. You know it is very much like your own state, largely composed of mining camps, largely composed of large cattle ranches. We held several hundred meetings. At the close of every meeting we took a vote, and after having heard the arguments and listening to the reasons, the vote was in every case almost unanimous for woman suffrage, and I was told by no less a gentleman than Mr. Allen, who is talked of so much in the Territory of North Dakota as likely to be their first Governor, that he then lived in Colorado, and he said that the politicians generally expected it would be carried; but unfortunately the men who were opposed to it, did not attend the meetings. Every man who beat his wife, every man who habitually got drunk, every man who didn't know his right hand from his left voted solidly against it; and enough conservative men, who believe that everything that is, is right, and that everything new is wrong, they voted with them. The matter had not had a fair consideration before the people, and the result was, that upon a light vote, it was voted down. Now the point is this; your legislature will be an intelligent body of men, selected by the people for the purpose of considering public questions, paid for their time to come here, and consider such questions as this, and if you put into your constitution a provision empowering your legislature hereafter at its discretion to extend suffrage to all citizens 21 years of age, of sound mind, not convicted of crime, without regard to sex, this subject will be considered from time to time, and the legislature will consult with its constitutents. The question may at any time be made an issue in the politics of your state, and when public sentiment is ripe for the change, the legislature is empowered to grant it—just as every territorial legislature that ever met in Montana has had that same power. And we ask that while you organize your constitution in accordance with the supposed public sentiment of the day, that you do give to the legislature this harmless, this beneficient power to extend suffrage hereafter to other classes of our population which may in the course of social and political development be needed for the best interests of the state and Nation.

And having now stated the very simple and conservative proposition which I am here tonight to advocate, in order to strengthen the probability in your minds that such a change may be demanded at no distant day, I desire you to lay aside preconceived prejudice, if you have it, and look at this matter of woman suffrage in the light of simply common sense. Gentlemen, what is a vote? A vote is an intelligent expression of a political opinion upon questions of common interest, to the whole people—women no less than men—I say it is the expression of an opinion, and your own convention is assembled tonight under an enabling act of congress which provides that you shall form a constitution not repugnant to the principles of the declaration of independence. Well gentlemen, I think I can show you that upon the principles of the declaration of independence, a woman has the same right to vote as a man. Let me simply call your attention to the fact that this declaration of independence begins thus: "We hold these truths to be self evident, that all men are created equal, endowed by their Creator by certain inalienable rights, among which are life, liberty and the pursuit of happiness." "Then" said our fathers "to secure these rights"—the rights of life, liberty and the pursuit of happiness,—"governments are instituted among men deriving their just powers from the consent of the governed." Now is there a man on this floor or a man in this territory, who will doubt or deny that a woman has the same right to life and liberty and the pursuit of happiness as a man. Why everybody will admit it. "But" said our fathers "to secure these rights"—the rights of women equally with the rights of men—"governments are instituted deriving their just powers from the consent of the governed." Women are governed, and the only form of consent known in the republic is the ballot. And so long as one half of our citizens, or rather I should say here one third of your citizens, for I am told that the men exceed the women two to one—so long as one third of your citizens are denied by the constitution and laws, the right of consent, the principles of the declaration of independence are violated, so far as the women are concerned. I may be told that our fathers did not mean that because they did not put the ballot in the hands of women. Yes, but they denied the right to others besides women. Gentlemen, some of our conservative men, who are not willing that you should even consider this question—some of our conservative friends seem to forget the fact that the institutions under which you are living did not exist 100 years ago; that the great majority of the men who vote today in Montana were not allowed to vote 100 years ago. Men seem to forget that political society is progressive and that the thoughts of men widen with the progress of years. I remind you that little more than 100 years ago this country was a monarchy, governed by King George and the British Parliament beyond the sea, and when our fathers took up the standard of rebellion against the British government, and put forward those principles, they were regarded by the people of that day, as more dangerous than the principle for which I am here tonight. Why, gentlemen, look at the history of mankind: Everywhere, in all ages, the earliest form of government is a despotism. What is a despotism? It is a political society, where only one man or as it sometimes happens one woman, is the sole source of political power, and all that the body of men and women have to do is to obey. That is the beginning, but it is better than barbarism; because any form of government is better than none. It is order, and order is heaven's first law; and so even despotism is better than barbarism, which is a state of war where every man's hand is against his neighbor. And so political progress begins and very soon it is found to be inexpedient and unwholesome to trust the political power in the hands of one man; that he violates the right of the people and robs them, and so a new movement begins, and the second step has always been to change the despotism—the one man power—for the aristocracy of birth, that is, a political power where certain great and noble families alone exercise political power. And these families became educated and intelligent, and they serve as a counterpoise to the excesses of the despot. And thus political power gradually widens. Commerce begins and manufactures. A new step is taken, a great many rich men demand admission and they are brought in in short and the aristocracy of birth gives place to the aristocracy of wealth—the moneyed power. Now, gentlemen, when this country was discovered, the highest form of political progress that the world had ever reached was the aristocracy of birth and wealth, and when the great monarchies of France and Spain and England took possession of this continent and undertook to parcel it out, it was on the understanding that the same aristocratic governments should exist here as in Europe; but it was so far off they could not reach it and very rapidly the land passed into the hands of the men who tilled it, and for the first time in history, the great mass of farmers were the owners of the farms they cultivated; and these men in their turn demanded suffrage; they demanded it of the British government, and when it was denied them they took up arms in rebellion; and when they had carried that contest to a successful issue, they like us were the creatures of habit, and although they had put forward that wonderful declaration of independence, when they came to apply those principles, they didn't half apply them in the case of men, to say nothing of women; for not only did they want an entire race of slaves; but when they organized their state governments after the war ended, they limited the suffrage to those only who possessed a certain amount of property. They allowed no man to vote, unless he owned a certain amount of real estate, so that it is literally true, that when the war of the rebellion ended, the majority of the men by whose blood and toil and sacrifice, the independence of this country had been achieved, found themselves as utterly shut out of the government as they had been under King George. But scarcely had the guns of the rebellion ceased to sound, when the old Democratic party under the leadership of Thomas Jefferson demanded suffrage for poor white men as the natural right of the citizen under the declaration of independence. They said a man may be poor, but honest and intelligent and industrious; he has a right to the ballot and he needs it more than the rich man, for his protection. The Federal party which had carried the war of independence to a successful conclusion, intrenched in power in state and nation resisted the demand. They said no, "Suffrage is for gentlemen, for scholars, for college graduates; the hard handed sons of toil have no right to the ballot," and so the battle raged. Old Benjamin Franklin, a born democrat, took a most hearty interest in the repeal of the property qualifications for voting. Said Franklin, "In my town in Pennsylvania a man owned a jackass worth 40 pounds, and the man voted; but one day the jackass died, and the man was not allowed to vote. Who, then, is it that votes in Pennsylvania, the man or the jackass?" (Laughter and applause) A fine sentiment of justice, to which we appeal, gentlemen, tonight in behalf of equal suffrage for women, rallied to the support of the Democratic party in its war against property qualifications. State after state swept them away, so that when the war of the slaveholders rebellion broke out in 1861 only two states retained them, the state of South Carolina and the state of Rhode Island; and I am proud and glad to say that last year the state of Rhode Island wiped them out, and today there is not a state from ocean to ocean that retains the property qualification. Now what was the result of that to the country? No sooner was it known in Europe that any American—the poor man—has the same political rights as the rich man, than that great stream of immigration set in, which in about 100 years has transformed a few feeble agricultural colonies on the Atlantic seaboard into a great continental nation, with its railroads, telegraphs, electric lights, 50,000,000 of free men and half free women, living today under the stars and stripes of this republic, because the democratic party in 1790 had the sagacity and the justice to extend suffrage to the working men of America. (Applause) But they set up a white man's government. Why? Because in nearly every state, negroes were held as slaves, and it is impossible in any state or nation, that a slave can be a voter, because in law he is the property of his master, and to give him a vote, is only to double his master's vote. And no sooner was this great step of progress made, then great men in the north and south began to agitate for the emancipation of the slaves on the ground that slavery was contrary to the principles of the declaration of independence and the rights of men. The democratic party which had held power for generations, and the whig party which had grown up with the manufacturing interests of the nation sided with the south, and at last as the discussion grew on the south undertook to secede from the union and to organize a slave holders' rebellion—just such a rebellion as the old rebellions of Greece and Rome, which you know had but a very small class of voters—the great mass of men and women in Greece were slaves—and so they attempted to organize a slave holding confederation. Then the great republican party came forward; in its turn it became champion of political progress. It put down the rebellion, it emancipated the slaves, and then it demanded suffrage for the negro man, upon the very same arguments on which they had demanded for the white man, as the natural right of a citizen under the declaration of independence; and they not only put the ballot in the hands of 800,000 emancipated slaves, not one in a hundred of whom could spell, much less comprehend the word "vote," but they wrote it in the constitution that hereafter no man should be deprived of his ballot on account of race or color or previous condition of servitude. Now, gentlemen, you see we have made three great changes within the century; first we were a monarchy government by King George and the British Parliament; then we became an aristocracy of wealth and an aristocracy of money under the old federal party, then we became an aristocracy of race under the old democratic party, and within the recollection of men in this hall we have become an aristocracy of sex under the Republican party—a nation where every man is a sovereign and every woman a subject; and some people seem to think that we have reached the political millenium, and that all we have to do is to live on the laurels of our ancestors. But I am here to say that we have only half applied the principle. Governments are just only when they rest on the consent of the governed. Women are governed. Governments are organized for the protection of life, liberty and the pursuit of happiness. Women have the right to life, liberty and the pursuit of happiness, and therefore either the principle of the declaration of independence is false or your government is a despotism so far as women citizens are concerned. Now, gentlemen, I do not see how the logic of that can be answered. Either the principle is wrong or the women have a moral right to vote. I am one of those who believe it is always right to do justice. I am one of those who believe in the Republican-Democratic principle, of an extended suffrage, and I remind you gentlemen in organizing your state constitution, of the words of Tennyson, in his immortal ode upon the Duke of Wellington, when he says: "For in all time and through all human story, the path of duty is the way to glory." Now if you have the manhood, the enlightenment, the courage to put the full woman suffrage, the full universal suffrage in accordance with the declaration of independence, into the body of your state constitution, I can promise you that within five years you would have in Montana 100,000 of the most progressive, and the most desirable immigrants that America can furnish. (Applause) The same interest in the principles of our government that has brought me here, gentlemen, to plead the cause of universal suffrage tonight is uppermost in the minds of hundreds of thousands of our eastern people, and is checked and repressed by the conservatism of these old constitutions, which it is almost impossible to change. Now then I say deliberately, if Montana will put universal suffrage in its state constitution, you will have 100,000 of the best immigrants that New York, the New England and Middle Western States can furnish; and your fields will smile under irrigation and your mines will pour forth streams of the precious metals, with the hardy handed laborers who will join their interests with yours. But, gentlemen, some people are not quite sure that it is safe to do right; there are plenty of people who want to know it is safe to do justice, and for the benefit of these, I want to prove to any man or women who has simply listened to me without prejudice, that woman suffrage means the most thorough and radical political reform that the world has ever seen; and I just ask you to look at this point. It is admitted among political thinkers that every class that votes makes itself felt in the political governments in the direction of its interests, its principles and its peculiarities, for instance, a certain district in New York City sent to Congress for many years the Hon. John Morrissey. John Morrissey was a gambler and a prize fighter; everybody knew it; he was sent to Congress because he was a gambler and prize fighter, to do the bidding of a constituency of men like himself, and who sat there as the representative of the gamblers of America, to see to it that congress made and enforced no law against gambling. So you see that gamblers if they have votes make themselves felt. When I was a young man traveling in the Wabasha Valley upon my business, I found horse stealing a fashionable vice, and the farmers of that valley could not get any justice, for the horse thieves had organized themselves; they elected a judge, and they elected a sheriff, and they packed the jury, and when an honest farmer caught a rascal in the act of stealing his horse, 9 times out of 10 the sheriff forgot to lock the door and the man escaped without a trial; but if he was brought to trial, the Judge, elected by the votes of horse thieves charged upon some technicality in favor of the prisoner, and the jury packed with horse thieves brought in a verdict of not guilty; until the farmers were compelled to organize bands of regulators, and they hung several of the most desperate horse thieves, and so put down the fashionable vice of horse stealing. Well now, gentlemen, I am not here tonight to advocate that you put into the constitution of Montana a guarantee that the gamblers and the horse thieves shall vote, for I presume you may put in the word "male", and that would cover them all; not one of them but would vote early and often. I am here to advocate extending suffrage to that great class known as women, and if you want to know what they would do for the government, you must ask yourself in what respect do women differ from men, because today we have a purely masculine government, we have in it all the qualities of men, and they are noble qualities, qualities given by God for wise and good purposes as I believe. But, gentlemen, the woman is different from the man. I demand woman suffrage first of all because women are different from men, and always will be so, and if you want to know just what those feminine qualities are, of which the government will in part partake when women vote, I ask you to look with me for a moment at the qualities in the woman that differ from those in the man. Now it is the glory of womanhood that women are less under the influence of great physical appetite and passion than men; they are more influenced by their convictions, by their sympathies, by their love of their associates. Women are not tempted by the gross vices to which our sex are subject. They are not tempted by the saloon, they are not tempted by the gambling house, nor the worse house, but women are in point of fact different in these respects, for they have an elevating and refining influence, because they are thus exempt in part by nature from the overpowering temptations which appeal to men. Why, gentlemen, you know the condition of this city of Helena in early days and every other mining camp; you know the condition of the men of California; you know the story of California and how their condition was elevated and how men were made better by the presence of women and that is as true today as it was then. Now, gentlemen, in the next place, women are more peaceable than men I know there are qualities in women that far surpass those in our sex. It is true not only of the man, but of the whole animated creation. The male animal is the fighting animal; and it is as true of the man as of the buffalo Now when you consider the government is organized, first of all, not to make men temperate, not to make men honest, but to protect the peace, and the property and the lives of men from the aggressors, you will see that to keep the peace is the first duty of the government. We have had already repeated wars with foreign nations. We have had our Presidents assassinated, we have had the most bitter strife of parties, and we have had a civil war that has cost millions of dollars because we have organized our political society on the instincts of the male human being, without bringing with it the power of the female human being. We find in Genesis that God made man in His own image, male and female, and gave them dominion—not the man dominion over the woman. And so I might go on through the Bible and show you that in the Jewish nation and in the early forms of Christianity women were recognized all through as the equals of man. But I won't stop on that now. But, gentlemen, in the next place, women are more temperate than men. Now, I have had more than one man say to me since I have been here that he would vote for woman suffrage but he was afraid of prohibition. Well, I told him his fear was very unreasonable, because prohibition was unpopular. I said, There is one State in the Union where woman suffrage has a foothold, and there has never been any movement in Wyoming for prohibition; they have established good order and good morals, but they have never attempted to establish prohibition in the Territory of Wyoming where women have had control now for many years. But, gentlemen, I am willing to admit that women are in favor of temperance, and I don't believe there is a man on this floor that is not in favor of temperance; I don't believe there is a drunkard on our streets but what in his heart is in favor of temperance; and it is simply a question of what is the best mode to reach it; and when you have woman suffrage the good men and women of the community will study this question of intemperance and they will make some wise and good and conservative law and they will enforce that law. Now, I want to say a word on prohibition and license, because I want you to see that this has nothing to do with the question of prohibition. When I moved to Massachusetts twenty years ago I found a prohibitory law on the statute books, but I had not lived a month in Boston before I saw liquors sold, and on every street, under a prohibitory law. It was not enforced. And the people rose up against it; they said it was nothing but organized hypocrisy; it was nothing but an organized blackmail upon the liquor dealers, and the policemen were largely bribed not to see what was going on under their eyes. They swept it away, and they passed a restrictive law, that the saloons should be closed on Sunday, and that no liquors should be sold to minors, etc., and those restrictive laws are no better enforced than the old prohibition laws. They are all set aside. Now, why is it that in Massachusetts prohibition didn't prohibit and restriction does not restrict? Simply because there was not voting power enough behind the law to make the officers of the law perform their duty. And what you want, gentlemen, is to have that moral power behind a temperance law which will see that it is fully and freely and honestly enforced. I agree with General Grant, who said the best way to repeal a bad law is to enforce it, and I will add, the best way to maintain a good law is to enforce it; and I maintain it is wrong and foolish to say that woman suffrage means prohibition, or that it means high license, but I do maintain that woman suffrage does mean temperance, because we know as a matter of fact that the women of the community are more temperate than men, and that not one woman in fifty is in the habit of drinking intoxicating liquor. Well, now, gentlemen, women are more chaste than men; if it were not so you would not have the pure and happy homes of Helena and of Montana; and woman suffrage means a respectable purity in legislation. Women are more economical than men. It is harder for a woman to get a dollar than it is for a man. Under our present organization women cannot get a fair pay for their work; they never did and never will until they get the ballot. We have 20,000 women in Boston working at $4 a week and less. How can those women live lives worth living on such a miserable pittance as $2 and $4 a week? And why is it they are thus oppressed? Simply because public sentiment has not demanded for women the same measure of equality and justice that it demands for her brother. We exclude women from a thousand avocations which they could attend to just as well as men, and we crowd them into a few avocations where they are underpaid. People say "That is supply and demand". But supply and demand are regulated by the habits and customs of society, and I remind you that six months after the women had the ballot in Wyoming the legislature passed a law that in all schools where women are employed a woman should be paid the same wages as a man. "Equal pay for equal work" is the watchword of justice, and it is the meaning of woman suffrage. Women never do and never will get it until they have the ballot, and, gentlemen, no class of men ever had it until they got the ballot. Why, it is not a hundred years ago that it was made a law in England for two men to combine and try to raise their wages. Another point: I say women are more economical than men. But the highest argument, gentlemen, as statesmen that you ought to consider in this matter is, that the women are the most law-abiding class of our citizens. If you will search the records of the courts of the United States, you will find that there are more than ten men convicted of crime to every one woman Not only that, the crimes that the women are convicted of, men generally go unpunished for. They are mostly for debauchery and drunkenness. Men are seldom convicted of this offense. Men are convicted of rape and murder and robbery, a more serious and aggravated class of crimes. So that not only are our women ten times as law abiding as men, but the crimes they commit are a less dangerous class of crimes. Women are more peaceable than men; they are more humane; they are more temperate, they are more just; they are more economical; they are more law-abiding. Are not these the very qualities that obtain in our government? And when we have the refining and purifying influence of women superadded to the strength and the business capacity of men, we shall have a perfect government—a government of the people—and we never shall have it without them. Now, gentlemen, I know it is said that women do not want to vote, and to a certain extent it is true. No class of citizens ever did want to vote until the ballot was placed in their hands. After the war of the revolution ended the white man, the working men of America, never petitioned for the ballot, but the democratic party with Mr Jefferson as their leader said: "It is their right and they shall have it." And without a petition and without a request the ballot was put in their hands and the great body of that class of men have been voting the democratic ticket from that day to this When the Republican party put down the rebellion no petition for suffrage went in from the negro; no organized demand was ever made in his behalf by his own race. But the leaders of the Republican party said "We know the negro is loyal and has followed the flag of his country, and we will give him the ballot as a political necessity and a social justice," and they put it in his hands without asking So, gentlemen, it is uncertain that any class of citizens will ever demand the ballot until it is given them. They will become broader and wiser and better women when they feel they have a duty to perform for the protection of their homes and for the good of their country. And when men say women do not want to vote, I say, How do you know, gentlemen? When you say women do not want to vote, I am afraid you are altogether too much afraid of hurting their feelings. It reminds me of a very bashful man named John. Poor John was regretting that life was passing and he had no wife and no home; and I said "John, why don't you marry?" "I am a poor man; nobody wants to marry a man without property" I said "John, how do you know?" "Why," he said, "you would not have me take such a liberty with a woman as to ask her to marry me." "Well, John," I said, "it seems but natural that you should." Just then a bright thought struck me, and I said "John, have you ever seen the woman you loved well enough to marry? A woman for whose sake you are willing to leave all the world and be faithful unto her until you die? If you have," I said, "you just ask that woman if she has any objection to your making her a matrimonial proposition, and if she objects you dry up, don't say another word." John went away and I forgot all about it A few days afterwards he came rushing in and shook my hands until I thought they would come off. "Oh," said he, "I was down to Mary Ann's house last night" Said he. 'I have loved her for years, and she looked so beautiful I thought I would give anything in the world to make that terrible proposition, and I make a great effort and I said, Mary Ann, would you have any objection if I made you a matrimonial proposition?" "Why, no John," she said, "if you want to make a proposition of that kind, don't you wait a moment on my account, but go ahead and make it" Said he, "I made my proposition, and would you believe it, she actually accepted me, and we will be married on the first day of next month." (Laughter) Well, now, gentlemen, when Mary Ann here in Montana tells you she has all the rights she wants and she does not want the ballot, she has not thought about it; and if she has thought about it she is thinking of some John here in Montana that she thinks doesn't want her to vote, and she doesn't want to be irritable, and she doesn't want to lose the esteem of her male friends; but, gentlemen, it is your fault that she says that, because we have always taught the women that it is not their business to meddle with politics, and so it is our fault after all. But my word for it, if you meet Mary Ann out here in Montana half way and tell her that you are willing she should vote to elect good men, to make good laws and build up a grand state among these mountains in the very center of the continent; my word for it, Mary Ann will accept the proposition and she will vote in the interest of God, in the interest of her home, of her husband, of her children and her native land, and you will have a better wife, a better home, and a better government; for it is true, gentlemen, that in every department of human effort where men and women work together it is better that man should not be alone. Oh, gentlemen, I wish we would rise to the dignity of this great question. This is not a mere question of woman suffrage. It is a question of the amelioration of the human race; it is a question of the life of human society. And I remind you that if the historian asks in any age or country which were the foremost race, he doesn't ask who had the most money, or the most silver and gold; he asks where were the women placed? And he writes down the ruling race as the race that gave freedom to its women.

Gentlemen, you are here to make laws for the government of posterity. Don't put in these restrictions; don't tie up the hands of your legislatures. Give them a chance to make laws in accordance with the progress of society and the demands of an enlightened and progressive public opinion. And let us all stand for progress, let us all stand for justice and for liberty and for equal political rights for men and women. Then we may exclaim in the words of Longfellow:

"Thou, too, sail on, O ship of State,
Sail on, O Union strong and great;
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate."

ELEVENTH DAY.

Thursday, July 18th, 1889.

Convention called to order by the President at 9 A. M.

The Clerk called the roll.

The Chaplain offered prayer.

The Clerk read the Journal of the previous day.

Mr. Rickards, of Silver Bow: The Committee on Education desire to make a report.

The President: The report of the Committee on Education will now be read.

The Clerk read as follows:

Mr. President, your Committee No. 8, on Education, to which was referred Article 9 of the Constitution of 1884, beg leave to report that it has duly considered the same, together with all matters pertaining to this subject, and herewith transmits the result of its labors in the form of the following provisions, which are hereto attached, and recommend that they be adopted as a part of the Constitution.

PROPOSITION NO. 17.

"July 18, Reported by Committee on Education—J. E. Rickards, Chairman.

(General File No. 16)

Section 1. It shall be the duty of the Legislative Assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools.

Sec. 2. The public school fund of the State shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted to the State by the general government, known as school lands, and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the State from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates or distributive shares of estates that may escheat to the State; all unclaimed shares and dividends of any corporation incorporated under the laws of the State, and all other grants, gifts, devises or bequests made to the State for general educational purposes.

Sec. 3. Such public school fund shall forever remain inviolate, guaranteed by the State against loss or diversion, to be invested, so far as possible, in public securities within the State, including school district bonds, issued for the erection of school buildings, under the restrictions to be provided by law.

Sec. 4. The Governor, Superintendent of Public Instruction, Secretary of State, Attorney General shall constitute the State Board of Land Commissioners, which shall have the direction, control, leasing and sale of the school lands of the State and the lands granted or which may hereafter be granted for the support and benefit of the various State Educational Institutions, under such regulations and restrictions as may be prescribed by law.

Sec. 5. The interest on all invested school funds of the State, and all rents accruing from the leasing of any school lands, shall be apportioned to the several school districts of the State, in proportion to the number of children and youths between the ages of six and twenty-one years, but no district shall be entitled to such distributive share that does not maintain a public free school for at least three months during the year for which distributions shall be made.

Sec. 6. It shall be the duty of the Legislative Assembly to provide by taxation, or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free, common school in each organized district in the State, for at least three months in each year.

Sec. 7. The public free schools of the State shall be open to all children and youth between the age of Six and Twenty-one years.

Sec. 8. Neither the Legislative Assembly, nor any county, city, town, or school district, or other public corporations, shall ever make, directly, or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property, in aid of any church, or for any sectarian purpose, or to aid in the support of any school, acamedy, seminary, college, university, or other literary scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

Sec. 9. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the State, nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex.

Sec. 10. The Legislature shall provide that all elections for school officers shall be separate from those elections at which other State or county officers are voted for.

Sec. 11 The general control and supervision of the State University and the various other State educational institutions shall be vested in a State Board of Education, whose powers and duties shall be prescribed and regulated by law. The said Board shall consist of Eleven members, the Governor, State Superintendent of Public Instruction, and Attorney General, being members ex-officio, the other Eight members thereof shall be appointed by the Governor subject to the confirmation of the Senate, under the regulations and restrictions to be provided by law.

Sec. 12. The funds of the State University and of all the other State institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they are dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the State against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions."

The President· If there be no objection, this report will take the usual course, and be referred to the Committee on Printing, and ordered to be printed.

Mr. Toole, of Lewis & Clarke: Mr. President, the Committee of Legislative Departments desires to make a report.

The report was sent up to the Clerk's desk, and read, as follows:
"Resolution No. 19, by Conrad. Providing for State Examiner. July 16th, received and referred to Committee on Legislative Departments.

Mr. President, your Committee on Legislative Departments have directed me to report back the within resolution, with the recommendation that the same be referred to the Committee on Executive Department."

(Signed) J. K. TOOLE, Chairman.

Mr. Brown, of Choteau, sent up a resolution to the Clerk's desk, which was read, as follows:

Resolved, that the Committee on Judiciary of this Convention be instructed to consider and report whether the Enabling Act of Congress provides for a general election to be held before admission to fill all the offices, both state and county, created by the Constitution."

The President: This resolution will be referred to the Committee on Judiciary, if there be no objection.

The President then announced the special Committee to consider Resolution No. 7, as follows: Middleton, Maginnis, Knowles, Callaway, Muth, Haskell, Parberry.

Mr. Callaway, of Madison: Mr. President, I move that the Convention do now resolve itself into a Committee of the Whole, for the consideration of general orders.

The motion was seconded.

The Chair then put the question, and the same was carried.

The President: The Chair will appoint the gentleman from Madison (Mr. Callaway) to take the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Callaway in the Chair.

The Chairman: The Committee will come to order. The first proposition on general file is No. 1, on Preamble.

Mr. Bickford, of Missoula: Mr. Chairman, I move you, sir, that we proceed to consider General File No. 1, and that we consider the same by sections.

The Chairman: It is unnecessary to do that, as the rule provides that the article shall be read by sections.

The Clerk read Section 1 of the Preamble and Bill of Rights.

Mr. Bickford: Mr. Chairman, I move you, sir, that in the second line the words "by virtue" be stricken out, and, in lieu thereof, the words, "in accordance with" be inserted.

The motion was seconded.

Mr. Schmidt, of Silver Bow: Mr. Chairman, I would like to offer an amendment to Resolution No. 1.

The Chairman: The gentleman from Missoula moves to amend the Preamble as follows: Strike out of line two the words "by virtue of" and insert the words "in accordance with." What is the pleasure of the Committee?

Mr. Sargent, of Silver Bow: Mr. Chairman, I would like to offer an amendment to the Preamble.

The Chairman: The gentleman from Silver Bow offers the following form of Preamble: "We, the people of Montana, grateful to Almighty God for civil and religious liberty, in order to secure and perpetuate the same, and to organize a free government for ourselves and those to come after, do ordain and establish this Constitution."

The motion was seconded.

Mr. Sargent: Mr. Chairman, I do not think it is necessary to refer in this Preamble to the authority by which we form a State Constitution.

Mr. Carpenter, of Lewis & Clarke: Mr. Chairman, will a substitute for this be in order? If so, I offer the following substitute.

The Chair rules that this would not be in order.

The Chairman: There has been offered by the gentleman from Mishoula an amendment. To that amendment the gentleman from Silver Bow offers an amendment, and no other amendment can be received at this time.

Mr. Collins, of Cascade: Mr. Chairman, Mr Schmidt. the gentleman from Silver Bow, has another amendment, which is an amendment to the amendment. I have not heard the amendment of Mr. Schmidt read.

The Chairman: The substitute offered by the gentleman from Silver Bow (Mr. Schmidt) is as follows:

"We, the people of Montana, in order to establish for ourselves and our posterity a permanent and republican form of government, and to provide for enactments thereunder of just laws, and a prompt and proper execution of the same, and an impartial administration of justice among us, and with a view of insuring order and domestic tranquility, provide for the common defense, promote the general welfare, and maintaining those means which conduce to human development and progress, and with the purpose of protecting ourselves in the enjoyment of those inalienable rights and cherished liberties which we have inherited from a brave and noble ancestry, do hereby enter into a solemn compact with each other, and declare and ordain this to be the Constitution for the State of Montana."

Mr. Toole, of Deer Lodge: Mr. Chairman, I move you, sir, that that amendment be laid on the table.

The motion was seconded.

The Chairman: It is moved and seconded that the substitute just read, which is an amendment to an amendment, be laid on the table.

Mr. Collins, of Cascade Mr. Chairman, I would inquire where the table is in the Committee of the Whole? We are working under Jefferson's Manual, and in the Committee of the Whole a motion to lay upon the table is not in order.

The Chairman: The point of order of the gentleman is well taken. The question before the Committee now is upon the adoption of the substitute offered by the gentleman from Silver Bow.

Mr. Hartman, of Gallatin: Mr. Chairman, I move that the consideration of the amendment offered by the gentleman from Silver Bow be indefinitely postponed.

The motion was seconded.

The Chair stated the motion.

Mr. Haskell, of Dawson: Mr. Chairman, I move to amend the motion of the gentleman from Gallatin, so that when this Committee arise it report this first substitute back to the House, with the recommendation that it be indefinitely postponed.

The Chairman The gentleman is out of order. The question is upon the adoption of the substitute of the gentleman from Silver Bow (Mr. Schmidt).

Mr. Toole, of Deer Lodge· Mr. Chairman, I move you, sir, that when this Committee rise, it report the substitute back with the recommendation that it do not pass.

The motion was seconded.

The Chairman: The question is upon the adoption of the substitute of the gentleman from Silver Bow.

The Chair then put the motion and the same was lost.

The Chairman: Now the question is upon the amendment of the gentleman from Missoula (Mr. Bickford).

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, I move to amend, so that the whole reference to the action of Congress will be left out, and that the Preamble, when adopted, shall read. "We, the people of Montana, gratful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do ordain and establish this Constitution." I hold that we establish this Constitution by virtue of the inherent right of the people, and it is not necessary for us to refer to the Enabling Act of Congress.

The motion was seconded.

The Chairman: The Chair desires to put the motion on the substitute of the gentleman from Silver Bow (Mr. Sargent).

The substitute was then read.

Mr. Knowles, of Silver Bow: Mr. Chairman, I agree that any reference to the Enabling Act here in our Preamble should be left out. I see a disposition here, and that disposition has been manifest for several days, to bring a matter into the Preamble of this Constitution that will be disagreeable and obnoxious to quite a number of the citizens of this Territory, and that is the reference in that Preamble to Diety—to Almighty God. I do not believe in mixing up, in any manner, religion with government. For a great number of years there has been a society organized in the United States seeking to amend the National Constitution by having some reference therein to Almighty God. It has met with but little favor.

It has been a question that has been discussed to a considerable extent. Religion was originally mixed up with government. Every government had its religion. The Jewish government had, as the head of their government Jehovah. All pagan nations had a religion—their peculiar and national religion. We have, in this country, generally adhered to the Christian religion. But this country is a free country. Every religion can be practiced here—it matters not what it is. A religion that would acknowledge Budha as the fountain of religion would be as appropriate here in this country as the Christian religion. The people that believe in no God are as good citizens of this nation as those who recognize the existence of God. As for myself, I believe in an Almighty God; but I do not believe in bringing it in here—bringing it into our civil government. I think that our religion should be separated entirely from our civil government. It should not be mixed up in any way, shape, form or manner. You know that, in the interpretation of the Constitution of the United States, our courts have occasion to recur frequently to its Preamble. Who inaugurated the Constitution of the United States? "We, the people." And the courts have deferred to that as interpreting as to whether that Constitution was a Constitution by the people or adopted by the state. And so, if you go on in this Preamble here, the question may arise hereafter, whether or not, in establishing our Constitution, if we recognize a Diety, it would be proper for a man who did not entertain such sentiments to hold office in this country—whether or not we had not made such a recognition of God as to become part of the Constitution of the land. And I tell you, gentlemen of this Convention, now, that there is a large element in this Territory, and all over the United States, that will not approve of a Constitution of that kind, where people can appeal to this Preamble in future, and say, "You have come here in your Preamble, and you have recognized God; that is a part of your civil government; that is a part of the institutions of your country—"when we know full well that here, in the very bill that is presented here, under which we are convened today, there shall be nothing upon the subject of race—religious liberty shall be guaranteed to all; and at the very start out of your Constitution you come in here and you recognize a religious people. It may be hereafter used in interpreting that Constitution, and I believe that we should not adopt any Preamble of that kind. I do not care how simple the Preamble is, but the bringing into this Constitution of a question of religion is something that I do not believe is really in accordance with this Act under which we have assembled. The religion of the country is the Christian religion, which recognizes as the founder of our religion, Jesus Christ. To Him we all bow; He is the head; He is the head of the religion; and if you are going to establish anything in this Constitution, you had better make a reference to Jesus Christ instead of God Almighty.

Mr. Kanouse, of Meagher: Mr. Chairman, in order that we may proceed more intelligently in this matter, it seems to me it would be well for members who desire to offer an amendment, that they offer the substance of those amendments, to enable us to vote upon those pending more intelligently than we otherwise could. In view of this fact, I offer the following as a substitute to the Preamble now before the Convention: "We, the people of Montana, in order to secure the advantages of state government, and to perpetuate the blessings of civil and religious liberty, do ordain and establish this Constitution."

Mr. Whitehill, of Deer Lodge: Mr. Chairman, there are 75 members of this Convention, and I believe there is not one of them who is not able to write a Preamble, and it is simply a matter of choice as to any of them. Now this Preamble which has been prepared by the Committee is a concise one. It embodies the ideas that most of the members of this Convention are willing to adopt; and in reply to Judge Knowles' ideas, it seems to me they are very queer. He says he acknowledges the fact that there is a great Creator, and I do not believe there is a nation on the face of the earth that does not. It is not a matter of religion, the placing of the words "Almighty God" there. If we were to adopt this idea and give recognition to the birth of Jesus Christ in it, then we might be treading on some religion; but the mere fact of our recognizing our gratefulness to Almighty God is something that is recognized by every savage tribe upon the face of the earth. Not only the cultured and intelligent people, but the savages, recognize the fact that there is an Almighty God, and I believe it is proper in this connection to show our gratitude to the great Creator—to show our gratitude for the blessings of liberty we enjoy. Now, another thing to which some of the gentlemen object is that we have made an allusion to the power which has given this authority. I say that this is eminently proper. You should remember that when Ethan Allen demanded the surrender of Fort Ticonderoga, the attendant officer, when asked by what authority, he answered, "In the name of the great Jehovah and the Continental Congress." And I believe that in recognizing the Congress in this it is proper. We believe, and I believe, that this is a nation, and that, without the authority of Congress, we have no power whatever to act. In 1884, we attempted to make a Constitution, and why didn't it carry? Because it was not authorized by Congress. And so I say that it is eminently proper here that we recognize the fact that we are acting here by authority of the Congress of the United States. Now, gentlemen, why are we acting? Why do we want a state government? For no other purpose, I believe, and every gentleman of this Convention will agree with me that it is for the purpose of securing the advantages of a State Government. It is not for the purpose of securing the blessings of liberty. Everybody knows that was secured to us a century ago, and we are not establishing a Constitution now under the same circumstances under which the first Constitution was established. And nearly every one of these amendments that I have heard read are copied almost verbatim from some Constitution that was framed in 1776 The conditions are greatly changed. Here is a preamble which expresses exactly what we are doing now. I venture to say that it is not copied from any preamble of the Constitution of the United States—I venture to say that it is not copied from one of them; and I think the ideas embodied in this one prepared by the Committee are proper. I am perfectly willing to say, and will say it again, that it is a matter of choice I believe there is not a member of this Convention who cannot write as good a one; but what is the use of discussing all these ideas of the different gentlemen? Let us adopt one or the other and settle the matter.

Mr. Dixon, of Silver Bow: Mr. Chairman, as the gentleman says, this matter is greatly a matter of choice. Now, merely to shorten up this discussion and come to a conclusion as soon as possible, I wish to offer, whenever I am in order, a substitute for the Preamble, which will read something like this: "We, the people of Montana, do hereby ordain and establish this Constitution." Now, that will answer just as good as anything else; the reasons why we do it are not important, and there is no reference to any outside matter in it.

The Chairman then put the question upon the amendment offered by the gentleman from Silver Bow (Mr. Sargent), and the same was declared lost.

Mr. Eaton, of Park: Mr. Chairman, if I am in order, I have an amendment which I would like to offer.

The Clerk read as follows.

"We, the people of Montana, grateful for all the causes which have conspired to permit so glorious a consummation, do ordain and establish the following Constitution."

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, I believe that the amendment that I offered is pending, is it not?

The Chairman: I will say to the gentleman from Park that the gentleman who now occupies the floor has previously offered an amendment, and therefore that is the amendment before the Convention at this time.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, I believe that the amendment that I offered is now pending. Now, I do not care to debate this question at all, I do not care to go into the religious question.. I do not care to have this Convention enter upon the unprofitable field of religious discussion. I do not doubt, that as long as man finds himself an inhabitant of this world, surrounded by forces that he cannot control, but which have the most momentous effect upon his destinies, that the question of what power has made the world, and what powers control and direct it, will be one of the greatest and most absorbing questions which can agitate, as for all time they have agitated, the minds of men. The answers that have been given to these profound questions may not have satisfied humanity. The Hebrew answer may not be satisfactory, the Christian answer may not be satisfactory, the Mohammedan or the Pagan answer may not be satisfactory, and the scientific answer may not be satisfactory; but the most unsatisfactory answer of all is the answer of the man who says there is no Cause and there is no God (Applause). I do not desire, indeed, I am most averse to the proposition, that any form of faith or creed shall be crystalized in this Constitution; but I find that, as the Preamble now reads, it is in conformity with nearly all of the Constitutions of all the States of the Union; and while this reference may not be contained in the letter of the Constitution of the United States, it is embodied in that grand instrument, the real Preamble of the Constitution of the United States—the Declaration of Independence. The reference to the Supreme Power is broad enough to embrace all sects and creeds—even the most advanced advocates of the new scientific thought may be content with it as the formation of a name for the primal energies of the universe, which, in their minds, is the first grand cause of all. I cannot understand how any man can find his conscience or belief hurt by this reference to the Great Power and Governing Cause. There can be no objection to it as it stands, and I am willing that it shall stand. It is in most of the State Constitutions, and, as it has never done any harm in any of them, I am sure that it can do none in ours. I do object, however, to that clause of the Preamble which says that we ordain or make this Constitution by virtue of an Act of Congress. I hold that it is framed by virtue of the inherent right of the people of Montana. I have always held that it was the right of the people of all the territories to form their Constitutions and apply for admission into the Union, without the intervention of any Act of Congress. Nearly one-half of the territories that have gone into the Union have formed their Constitutions without any Organic or Enabling Act of Congress; and although, as my friend from Silver Bow says, we formed a Constitution that was not accepted, it was not rejected on that ground. The Congress that rejected it, rejected it on other grounds, for they recognized the fact that previous Congresses had admitted territories into the Union which had framed their Constitutions without any Enabling Act. Therefore, I object to the statement in this Preamble that the people of Montana form their Constitution by virtue of this Act of Congress. It is inconsistent with the declaration immediately following, that all power is derived from the people. I call for the reading of my amendment.

Mr. Carpenter, of Lewis & Clarke: I sent up an amendment, Mr. Chairman, but it seems to have been lost.

The Chairman: The Clerk will read the amendment of the gentleman from Lewis & Clarke.

The Clerk then read as follows:

"We, the people of the Territory of Montana, invoking the blessings of Almighty God, do establish this Constitution for the State of Montana."

Mr. Carpenter, of Lewis & Clarke: I will give my reasons for that. The Enabling Act was passed in order to enable the territories to form Constitutions for themselves as States. Some of the territories have dodged that, and in the previous Constitution Montana dodged it. They said "we, the people of Montana." Well, now, that accurately expresses nothing. It is the people of the Territory forming a Constitution for themselves as a State. Therefore I have offered this amendment, although I shall not be able to vote upon it, as I am compelled to attend upon the Supreme Court in the next room; but I will leave it in the hands of the Convention.

The Chairman: The question before the Committee is upon the amendment of the gentleman from Lewis & Clarke (Maj. Maginnis). It strikes out all that part of the Preamble referring to the Act of Congress.

Mr. Collins, of Cascade: I will vote for the amendment offered by the gentleman from Lewis & Clarke (Mr. Maginnis) because I believe it is in the line of a good amendment, and, if that carries, then I will vote for one or two other amendments that have been offered in the Committee; and in that way we can come to a conclusion after awhile. But this is better than the original, and so I will vote for this.

Mr. Toole, of Lewis & Clarke: Mr. Chairman, I believe that everybody agrees that this is a matter very much of taste, and it is not important. It is simply the Preamble, and I do not quite understand why the gentlemen should be so punctilious with reference to the use of language. The Committee was charged with the duty and responsibility of reporting this Preamble. I think they were eminently competent to consider that question, and believe that they have considered it, giving ample time for that purpose. Now there certainly cannot be any impropriety in the use of the language that this is done, not by virtue of the Act of Congress, but in accordance with it. I believe that the chairman of the Committee himself has so amended the Preamble. We are yielding nothing when we say "in accordance with" it There is not a gentleman upon this floor but knows that the Governor and the Chief Justice and the Secretary of this Territory apportioned the Territory pursuant to that Act of Congress. They know the Executive of this Territory called this Convention together pursuant to that Act of Congress, and that we are assembled here today, with a full corps of officers to run this Convention, and that everything we do here, is in pursuance of the Enabling Act of Congress. Now, I believe in supporting and sustaining the Committee, especially upon these matters that are considered unimportant and immaterial They have given it, I think, proper consideration, and if the reports of the Committees of this Convention are to be entitled to no consideration, and we are to branch out in this line of policy, it is my opinion that this Convention will be in session here for 60 or 90 days (Applause).

Mr. Luce, of Gallatin I simply want to call the attention of the Committee to section 8 of the Enabling Act: "And if the Constitutions and governments of said proposed states shall be republican in form, and if all the provisions of this Act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of the election in all four of the States, and thereupon, the proposed States which have adopted Constitutions and formed State governments as herein provided, shall be deemed admitted by Congress into the Union"; etc. Now, I think that this Preamble simply intends to recognize the Act of Congress, and, under this amendment, to state in the beginning that we propose to make a Constitution in accordance with—that is all, and I do not understand why the Act of Congress which enables us to come here should be entirely ignored; and for that reason I have no objection to the Preamble as proposed and amended by the Chairman of the Committee.

The Chair then put the question on the amendment of the gentleman from Lewis & Clarke (Mr. Maginnis), and the amendment was declared lost.

Mr. Maginnis, of Lewis & Clarke: Did I understand, Mr. Chairman, that there was an amendment of the Committee to strike out "by virtue of" and make it "in accordance with"?

The Chairman: Yes sir.

Mr. Bickford, of Missoula: The amendment offered by the Committee, or by myself as Chairman of the Committee, was to strike out the words "by virtue of" and insert the words "in accordance with the provisions of."

Mr Maginnis, of Lewis & Clarke: I have no objection to that.

Mr. Knowles, of Silver Bow: I think the gentleman from Lewis & Clarke, when he comes to consider this question, will not agree to that. This Convention is not really making this Preamble for itself. This does not say that "we, the Convention of Montana Territory," do these things in accordance with the Act of Congress, but "we, the people." Now, the people are adopting this Constitution in their sovereign capacity, by virtue of the sovereignty that is in them—their inalienable rights. That is what is being done here. It is not adopted by this Convention. We meet here, we are proceeding in accordance with the Act of Congress: but when the people come to adopt this Constitution, they will say they do not adopt it by virtue of any Act of Congress, or in accordance with any Act of Congress. There is no authority given to them by virtue of the Act of Congress, because, as the gentleman from Lewis & Clarke (Mr. Maginnis) says, they can adopt a Constitution without any Act of Congress. They will adopt this Constitution by virtue of the sovereign power that is in them. The Act of Congress has nothing to do with it.

Mr. Dixon, of Silver Bow I offered an amendment, or proposed to, which, if now in order, I will renew

The Chairman: Will the gentleman from Silver Bow indulge me? There are now three amendments which are proposed. The first one is the one offered by the gentleman from Lewis & Clarke (Mr. Carpenter), which was sent up some time ago; the second is from the gentleman from Park, and the next is from the gentleman from Silver Bow (Mr. Dixon). Was there a second to the amendment of the gentleman from Lewis & Clarke?

A member: I second the motion.

The Chairman: The amendment will be read.

The Clerk read as follows:

"We, the people of the Territory of Montana, invoking the blessings of Almighty God, do establish this Constitution for the State of Montana."

The Chair then put the question on the above amendment and a vote being taken, the same was declared lost.

Mr. Eaton, of Park: Mr. President, I now renew my amendment.

The amendment was seconded.

The Chairman: The gentleman offers the following amendment: "We, the people of Montana, grateful for all the causes which have conspired to permit so glorious a consumption, do ordain and establish the following Constitution."

The Chair put the question on the above amendment, and the same was declared lost.

Mr. Dixon, of Silver Bow: I now move the adoption of my amendment.

The motion was seconded.

The Chairman: The gentleman offers the following substitute for the Preamble:

"We, the people of Montana, do hereby ordain and establish this Constitution."

The Chair then put the question on the above amendment, and a division being called for, the same was declared lost by a vote of 43 to 26.

Mr. Burleigh, of Custer: Mr. Chairman, I now move the adoption of the Preamble reported by the Commitee, as amended by the Committee.

The motion was seconded.

The Chairman: The Preamble reads as follows:

"We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a State government, do, in accordance with the provisions of the Enabling Act of Congress, approved the 22nd day of February, A. D. 1889, ordain and establish this Constitution."

The Chair then put the question on the above Preamble, and the same was declared carried.

Mr. Bickford, of Missoula: Mr. Chairman, I move, if it be in order, that when the Committee arise it report the Preamble back, with the recommendation that it be passed as amended.

The motion was seconded.

The Chair stated the motion.

Mr. Clark, of Silver Bow: Mr. Chairman: Before that motion is put, I would say that it is not necessary, in my opinion, to have this motion laid before the Convention.

Mr. Maginnis, of Lewis & Clarke: Inasmuch as this is a beginning, we might as well start out well, and I do not think it is necessary to state these motions on every paragraph. I suppose the rule in Committee is that, after a paragraph is passed, you cannot go back to it, and after all these amendments of the different articles are carried, a single motion that the Committee rise and report back the entire proposition with the amendments, is sufficient. It will save much time, and I think it would be best to follow the course I have suggested.

Mr. Bickford, of Missoula: Mr. Chairman, I withdraw my motion.

The Chairman: Section 1 reads as follows: "Section 1. That all political power is vested in and derived from the people; that all government of right originates from the people, is founded upon their will only and is instituted solely for the good of the whole."

Mr. Burleigh, of Custer: I move to strike out the word "from" in the third line, which reads "originates from the people" and insert instead "originates with the people"—in other words, I move to amend by striking out the word "from" in line 2 of Section 1, and inserting instead the word "with."

The amendment was seconded.

The Chair then put the question on the amendment, and the same was carried.

Mr. Kanouse, of Meagher: I move to amend the section by striking out the word "that" wherever it occurs in the section.

The motion was seconded.

The Chairman: The gentleman from Meagher (Mr. Kanouse) moves to amend by striking out the word "that" in the section, wherever it occurs.

Mr. Carpenter, of Lewis & Clarke: I move to amend that motion by inserting the word "and" in the place of the second "that"; so that it shall read "and all government of right originates with the people," etc.

The motion was seconded.

The chair then stated the motion.

Mr. Whitehill, of Deer Lodge: You will observe that if that amendment is adopted, it will be necessary to amend all the following sections clear through. That follows only after the heading; it is a declaration by the people of Montana that all political power, etc. Now, if that section was taken by itself, the amendment would be proper; but taken in connection with the statement that it is a declaration of the rights of the people, I think the word comes in proper enough.

Mr. Bickford, of Missoula: Mr. Chairman, in discussing this question I would say to the Convention that your Committee had under consideration the very question which is now pending before the Convention; that in order to satisfy the minds of the Committee a thorough investigation was had, and nearly all the Preambles and Bills of Rights of the different States of the Union were examined, and it was found to be almost the universal practice to use the phraseology here used in this report. I would say further, as the gentleman from Deer Lodge has well said, this is a declaration of the rights of the people. It is different from the ordinary grammatical construction, in connection with a matter of this kind, and it is entirely proper that it remain as it is. There is no grammatical error whatever as I can see, in using the word as it has been used here. We declare that certain things are the rights of the people. It seems to me that the report of the Committee should be adopted as it is. These amendments, if they are of any use whatever, are so immaterial that it is hardly worth while to discuss them. This Committee has had them under consideration. If there is anything that is of a material nature, I would be glad to see it corrected; but to spend the time of 75 men in discussing what is only a matter of taste,—and every man in the Convention will have a different idea as to what should be the grammatical construction of the sentence,—I say it is foolish. We are hardly called upon to do that.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, I would ask if there is not a Committee on Phraseology that goes over all these things afterwards, and, if so, why cannot we leave this to them?

The Chairman: The question before the Committee is upon the amendment of the gentleman from Lewis & Clarke, which is an amendment to an amendment. There are two amendments pending, one from the gentleman from Meagher to strike out the word "that" wherever it occurs. The amendment to that is upon the motion of the gentleman from Lewis & Clarke to insert after the word "people" the word "and."

The Chair then put the question upon the amendment and a vote being taken the same was declared lost.

The Chairman: The question now is upon the amendment to strike out the word "that" wherever it occurs in the Section.

The Chair then put the question and a vote being taken the same was declared lost.

The Chairman: The question now is upon the adoption of the amendment to strike out "from" in the last line and insert in lieu thereof the word "with."

The Chair then put the question and a vote being taken the same was declared carried.

The Chairman: The question now recurs upon the adoption of the Section.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, in order to further facilitate the business of the Committee of the Whole, I suggest the rule be, that, where a section is not further amended, it shall stand, without any motion to adopt. Where it is not amended, or where it is amended by the Committee, the section shall stand for report.

The Chairman: If that be the sense of the Committee, the Chairman will adopt the rule.

The Clerk then read Section 2, as follows:

"Sec. 2. That the people of this State have a sole and exclusive right to govern themselves as a free, sovereign and independent State, and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the Constitution of the United States.

There being no amendments offered to Section 2 the Clerk then read Section 3, as follows:

"Section 3. That all persons are born equally free, and have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property, and of seeking and obtaining their safety and happiness in all lawful ways."

There being no amendments offered to Sec. 3, the Clerk then read Section 4, as follows:

"Sec. 4. That the free exercise and enjoyment of religious profession and worship without discrimination shall forever hereafter be guaranteed, and no person shall be denied any civil or political rights, privilege or capacity, on account of his opinions concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness by bigamous or polygamus marriage or otherwise, or justify practices inconsistent with the good order, peace, or safety of the State, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend or support any minister or place of worship, religious sect or denomination against his consent; nor shall any preference by law be given to any religious denomination or mode of worship."

There being no amendment to Section 4, the Clerk then read Section 5, as follows:

"Sec. 5. That all elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

Mr. Marshall, of Missoula: I move to amend Section 5 by striking out the words "and open" in the first line, after the word "free."

The motion was seconded.

The Chair stated the motion.

Mr. Marshall, of Missoula: Mr. Chairman, I do not know what the words "and open," as they occur in the section, mean. We have now the secret ballot, and by the late law of the Territory the polls are removed, and no man can come within a certain distance of the place of voting; and it seems to me that the word as printed may render that law unsatisfactory, although that is not the intention; and it seems to me that the words "and open" really add no force to the section.

Mr. Bickford, of Missoula: I do not understand that the provisions of the bill known as the Australian System, prevents an open election; in other words, while there are restrictions placed around the exercise of the right of franchise, the Australian System does not prevent an open election. There is a meaning to the words, and the meaning should be preserved in this Constitution. Not only are elections to be free, but they are also to be open. They should be open to all persons who are legally entitled to vote. The polls should be open to all persons, who, under the laws of this Territory and the United States, are entitled to the right of franchise. I believe that the words should be left in, because the right may be protected by their remaining in the place where they now are.

Mr. Robinson, of Deer Lodge: I agree with the views of the gentleman from Missoula. I understand this to mean in contradistinction to secret elections—that is, the elections themselves shall be open while the ballots may be secret, closed ballots. But the election itself must be free and open to everybody—as contradistinguished from any secret election; it is in public and free to everybody. I see nothing wrong as it now stands, in the section.

Mr. Warren, of Silver Bow: Mr. Chairman, I certainly am in favor of the amendment offered by the gentleman from Missoula (Mr. Marshall). It is about time we had an election in this country that is free and not open. We have had enough of open elections in this country; and if this clause in this Constitution is for the purpose of doing away with or making a dead letter of the Australian System, which is now on our statute books, the sooner we know it the better.

Mr. Middleton, of Custer. Mr. Chairman, the words "and open," as used in that section, can certainly mean nothing more nor less than that the elections shall be public as contradistinguished from secret. Now, to say that that has anything to do with the Australian System of voting, or any other system of voting, is sheer nonsense. It certainly is right that that provision should remain where it is. The elections may not under any circumstances be conducted secretly. It means that the election itself should be public, but it has nothing to do with the mode or manner of voting.

The Chair then put the question on the amendment of the gentleman from Missoula (Mr Marshall) and a vote being taken, the same was declared lost.

The Clerk then read Section 6, as follows:

"Sec. 6. That courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property, or character, and that right and justice should be administered without sale, denial or delay.

Mr. Warren, of Silver Bow Mr. Chairman, I move to strike out the word "should" and insert the word "shall" in the second line.

The motion was seconded.

The Chair then put the question, and the same was declared carried.

Mr. Warren, of Silver Bow: Mr. Chairman, before proceeding, I move to strike out the word "of" in the second line and insert the word "to," so that it shall read "for every injury to person, property or character."

The motion was seconded.

The Chair put the question upon the amendment of the gentleman from Silver Bow, and the same was declared lost.

The Clerk read Section 7, as follows:

"Sec. 7. That the people shall be secure in person, papers, home and effects from unreasonable searches and seizures, and no warrant to search any place or seize any person or thing shall issue without describing the place to be searched and the person or thing to be seized, as near as may be; nor without probable cause, supported by oath or affirmation reduced to writing.

Mr. Robinson, of Deer Lodge: Mr Chairman, I desire to amend Section 7.

The Chairman: The gentleman from Deer Lodge offers the following amendment. "Amend Section 7 by inserting therein, after the word "seized," on line 3, the following, "and the claim of right of such person or thing seized, and object of such seizure."

The motion was seconded.

The Chair then put the motion, and the same was declared lost.

Mr. Marshall, of Missoula. Mr. Chairman, I move to amend that section by striking out the words "as near as may be," in the last line, after the word "seized"

The motion was seconded.

The Chair stated the motion.

Mr. Marshall, of Missoula: It seems to me, Mr. Chairman, that those words in this section simply amount to nothing. The Constitution of the United States, which provides for the same thing, says "particularly describing"; and it does seem to me that to require it to be described as near as may be is equivalent to leaving it out altogether.

The Chair put the question, and a division being called for, the motion was carried by a vote of 35 to 29.

The Clerk read Section 8, as follows:

"Sec. 8. That, until otherwise provided by law, no person shall for felony be proceeded against criminally, otherwise than by indictment or information (and by information in cases where the accused has been held to answer by the committing magistrate), except in cases arising in the land or naval forces, or in the militia when in actual service in times of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. A grand jury may be drawn and summoned at any time when, in the discretion of the district judges, it may be necessary.

Mr. Clark, of Silver Bow: Mr. Chairman, I offer an amendment to Section 8.

The Chairman: The gentleman from Silver Bow offers the following amendment to Section 8: "Amend Section 8 by striking out, in line 1, the words "that, until otherwise provided by law."

The amendment was seconded.

The Chair stated the question.

Mr. Clark, of Silver Bow: Mr. Chairman, there are some additional amendments there that I would like to have read. I would prefer to have the whole amendment read.

The Clerk then read as follows:

"also, in line 2, the words 'incidental or'; also all those words in brackets; also, all those words beginning with 'in,' in line 4."

Mr. Clark, of Silver Bow. I would like it to be considered as a whole. I would like to amend the whole section so as to read, when amended, "No person shall for felony be proceeded against otherwise than by information, except in cases arising in the land or naval forces, or in the militia when in actual service in the time of war or public danger."

Mr. Burleigh, of Custer: I would like to ask the learned gentleman from Silver Bow County if the object of the amendment is to abolish the grand jury entirely, and wipe it out from the statute book, or whether it is the intention to leave it in the discretion of the Judge in extreme cases, or such extraordinary cases as may appear to the Court on certain occasions, to select a grand jury to aid the court?

Mr. Dixon, of Silver Bow: I offer a substitute for this section as worded, in order to get the whole matter before the Convention.

Mr. Clark, of Silver Bow: If the Chair will allow me, I will answer the gentleman from Custer. My object in making this amendment is to abolish, absolutely and forever, the grand jury system in the State of Montana (Applause). Now, I do not know that this section as I have amended it is in proper form, and I did not have time to prepare a substitute for it, and I have no doubt there are gentlemen here who can greatly improve on the reading of the amendment as offered. I have had a great deal of experience with the grand jury system in this Territory. For the last 20 years there has been scarcely one year that I have not served upon a grand jury in this Territory; and in a great number of the indictments,—I think that it would average 60 per cent. or more—that have been found by the grand juries upon which I served, they were either quashed or a nolle entered. I have studied that system carefully. I have seen men go before the grand juries of the counties in which I have lived, actuated by the spirit of revenge to fasten something upon some man against whom they had a grudge. I have witnessed the fact that all the indictments that have been found were upon ex parte evidence, and as I stated, generally arose from matters of personal consideration. And it may grow out of this that any man in this community, or in this commonwealth, may have a stain fastened upon his name which will last forever, while he is as innocent as a new born babe upon the subject matter of the indictment. Gentlemen, I consider that it is inquisitorial; that it is founded upon ex parte evidence, and that these matters can be reached by information in every case, and the grand jury system done away with. I consider that it is a relic of the dark ages, that has lingered and clung to the institutions of this country, and that it is time for the citizens of the Nineteenth Century, and the people of Montana who are now about to be clothed with statehood, to rise up in their majesty and relegate it to the dark ages from whence it came (Applause).

The Chairman: If the gentleman will indulge me a moment, I wish to say that the gentleman from Silver Bow (Mr. Dixon) offers a substitute in relation to this matter—to strike out Section 8 and insert the following:

"Sec. 8. Criminal offenses of which justices' courts, and municipal or other courts inferior to the district courts, have jurisdiction, shall be presented by complaint; criminal offenses of which the district courts have jurisdiction shall be prosecuted by information after examination and committment by a magistrate, or by leave of the court, or by indictment without such examination or commitment, or without such leave of court. The grand jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary, and shall so order." The gentleman from Silver Bow moves that this be adopted as a substitute.

The motion was seconded.

Mr. Burleigh, of Custer: Now, Mr. Chairman, I will proceed to say what I proposed to say before I sat down, and that is, that the gentleman from Silver Bow County is not more firmly impressed with the importance of abolishing the grand jury system than I am; and I believe in making no half way work of it. I agree with him fully, that the system is a relic of the dark ages of barbarism, that came down to us from our forefathers, and that we have no use for it; that it is a black spot and a disgrace upon the escutcheon of our country at the present time. The substitute offered by my friend from Silver Bow (Mr. Dixon) —who is an eminent lawyer, one of the ablest in the Northwest—seems to me to furnish no adequate remedy that should be considered in disposing of this question. I believe the time has come when a man should go clothed in the full panoply of manhood and make his complaint against the accused, and have him arrested and held, and not any sixteen men in a secret inquisition; and I shall, for one, vote against the grand jury system—to abolish it root and branch—and vote for the proposition of the gentleman from Silver Bow County (Mr. Clark); which I think is right.

Mr. Robinson, of Deer Lodge: Mr. Chairman, I think we are now considering for the welfare of Montana one of its very important propositions in this Constitution. I do not quite agree with the gentlemen who have addressed this Convention upon that proposition. I do not entirely agree with them, but that is a matter in the discretion of this Convention. I am thoroughly imbued with the idea of prosecuting criminal cases by information and complaint, and am thoroughly imbued with the idea of dispensing with the grand jury system as far as it is possible to do it, and were it not but for one thing that I shall suggest, I should heartily and thoroughly concur in the views expressed by the gentlemen; and that is this, whether or not it would be wise to entirely wipe the grand jury system out, or whether it would not be wiser to retain it as contemplated in the amendment of the gentleman from Silver Bow, to a limited extent, leaving it discretionary with the Judge of the Court when a grand jury should be empanelled or to provide that it shall be empanelled once a year—a grand jury of seven or nine persons—for these reasons alone; sometimes, on overhauling the books and affairs of the county it might be necessary to make an examination and a grand jury would be the proper persons to do it—a small grand jury; and more important than that would be this: if we could have ideal prosecuting attorneys at all times, then I would say wipe it from existence entirely; but experience has taught us that we won't at all times get men who are entirely independent and free from the influences of friends or power, or a fear, sometimes, of cliques. Fear of political influences, of classes of men, may operate on the minds of time serving district attorneys, who would fail to file informations against men where there was merit in the case. Through the influences of these men prosecuting attorneys might not at all times do their duty. Then as a check, Mr. Chairman, upon such influences as that, whether or not it would not be wise to retain a grand jury of seven or nine persons, to be called at the discretion of the presiding judge, or to be called once a year, as a check upon the influences that official men, or cliques of men who have large political influence, might exercise over the minds of these prosecuting attorneys, who would not be willing at all times to come up squarely to the mark irrespective of influences that might be brought to bear upon them. It is a question for the consideration of this Convention, whether it would not be wiser to retain the grand jury system to that limited extent, as embodied in the substitute of the gentleman from Silver Bow, —Mr. Dixon, I believe. I am rather, so far as I am concerned, after giving it due deliberation and consideration, inclined to support that proposition, and not to abolish the system entirely, but to retain it to that limited extent, to provide for those contingencies.

Mr. Clark, of Silver Bow: Mr. Chairman, it seems to me that the objections proposed by the gentleman from Deer Lodge have not very much weight. Now, he states that the grand juries may be necessary for the purpose of examining records and the official acts of public officers, and matters of that kind. I do not know what the experience of the gentleman from Deer Lodge is with reference to these matters. I do not think, having engaged in the practice of law, he has been on as many grand juries as I have; and I have seen some of these examinations of public records, and it usually results in about this: the last day before the grand jury adjourns, they appoint a committee to go and visit the Treasurer's office; another committee will go down to the Clerk and Recorder's office, to see that he has not been derelict during the past year; another committee for the hospital and jail, etc. These gentlemen go down and see the Treasurer and Clerk, who sometimes have a box of cigars, the boys are treated. and they go off feeling satisfied Now, that a grand jury should be required to examine into the official acts of the public officers is one of the preposterous questions that are occasionally presented to an intelligent body of men. It would require a large clerical force and a great deal of time to do it. It is a uniform thing for them to go to these offices and come back and make a report, they do not know whether the Treasurer has got fifty thousand dollars or ten thousand dollars, as his books would show; they do not know anything about that. Hence, the idea of their making an examination such as ought to be made is little short of preposterous Now, as to the question of a district attorney being purchased or corrupted, I do not understand that this matter lies wholly within the jurisdiction of the prosecuting attorney. I understand that any citizen of this state, or this county, may lodge information against any other man and have him brought to justice for committing a crime. And the expense entailed upon the state or territory is a question of grave consideration. You have sixteen men empanelled to meet at the beginning of a term of court, and there are witnesses brought here, summoned to the county seat from all over the territory, in some cases, to await the action of this grand jury; and, in many instances, those witnesses are kept there for days before they are brought to give their evidence—which, by the way, is evidence that would not be received in a court of justice; and many times grand juries have had to delay from day to day to send all over the county to get witnesses upon some new case that has just been brought in the last few days of their session; and I say, therefore, that the objections to that part of the system which the gentleman advocates do not seem, in my opinion, to have such weight as bearing upon this question.

Mr. Bickford, of Missoula: Mr. Chairman, in order to expedite the consideration of this subject, I move you, sir, with the consent of the Convention, that the amendment, together with the original section, be referred to the Judiciary Committee, with instructions to report upon it, and to report a substitute if they deem it necessary.

The motion was seconded.

The Chair stated the motion.

Mr. Burleigh, of Custer: I hope that motion will not prevail. We have got the question before us now, and I think it is the time to dispose of it.

Mr. Clark, of Silver Bow: Mr. Chairman, I rise to a point of order I do not know by what authority a Committee of the Whole can refer a matter to the Judiciary Committee, or any other Committee.

The Chairman: The Chair was about to state to the gentleman from Missoula, that he is of the opinion that the point of order made by the gentleman from Silver Bow is well taken. Certainly this Committee could not refer any business to any Committee, but it could make its report and recommend it to the Convention, and then the Convention could refer it.

Mr. Bickford, of Missoula: If the Chair will permit me, I will change the wording of my motion, and move you, sir, that when the Committee arise it report this Section 8 back, together with the amendment offered with the recommendation that it be referred to the Judiciay Committee.

The motion was seconded.

The Chair stated the motion.

Mr. Middleton, of Custer: Mr. Chairman, this, probably, is as important a question as will probably come before this Convention. I am in favor of having this matter referred, for the purpose of having this section properly drafted. From the reading of the amendment as proposed by the gentleman from Silver Bow, and the substitute that was offered, I am unable to understand just how it reads and what it means. But it occurs to me that, before that reference is made, the expression of the Committee of the Whole should be ascertained, so that the Judiciary Committee in preparing a substitute for Section 8, if they might see fit to do so, would know whether or not the Convention were in favor of abolishing the grand jury system entirely. So far as I am concerned, I heartily concur with all that has been said by the gentleman from Silver Bow, Mr. Clark So far as the matter of providing that the grand jury may be impanelled in the discretion of the district judge is concerned, the history of the grand jury system in the State of Wisconsin demonstrates that that power practically amounts to nothing and is not exercised The constitution of the State of Wisconsin was amended in 1871, abolishing the grand jury system The legislature at its next session prepared a statute on the matter of information that is full and complete. The district judges under that law have the power and authority to impanel a grand jury when they deem it necessary. But there has never been a grand jury impanelled in that state since the adoption of that amendment to the constitution except one. That exception was at the time the Newhall House in Milwaukee burned down, where there were several lives lost and culpable negligence charged as to the cause of the fire. A grand jury was impanelled at that time upon the order of the district judge, deeming it a matter of the greatest importance, of the ablest and best men that could be found in the city of Milwaukee. That grand jury sat for several days and practically accomplished nothing. They found no indictments against any one That is the only instance in eighteen years, under the Wisconsin statute and constitution, where the judges have the power to impanel a grand jury, that it has been exercised. So that I believe it would be safe enough for us to provide in this Constitution for its relegation to the past, where it properly belongs. But it occurs to me that we should in some way or other ascertain the sentiment of the Committee of the Whole, before the reference, as contemplated by this motion, is made

Mr Joy, of Park: Mr. Chairman, It seems to me that it is too important a question to be decided off-hand. I do not think we have, any of us, considered it thoroughly enough. This question has been agitated for several years by the ablest men in this country, and sentiment with regard to it is divided Now, I have listened very attentively to the remarks of the gentleman from Silver Bow, Mr. Clark, and I fail to see that the argument which he presents would in any way help us out of the dilemma. According to his statement, he bases his claim that the grand jury system should be relegated to the past upon the ground that a great deal of injustice is done through spite and revenge, actuated by improper motives, that men come before a grand jury and secure the indictment of some citizen, and in that way the name and fame and family of worthy citizens are disgraced. Now, how are we to avoid that? If there was any way—if the suggestion he makes would help us out, I would be in favor of it. But he said, the second time he stood upon the floor, that according to his idea, his understanding would be that it would not be left to the prosecuting attorney alone to present these cases, but that any citizen of this state might go and lodge complaint against another citizen, known or supposed to be guilty of any crime. Would not that give the same opportunity for this spite and revenge to take its course? Would it be any more difficult for a man to go before a justice of the peace, or even before a district court, and make a statement that some crime had been committed, even if he were actuated by spite or revenge? Would it be any more difficult for him to drag a man into court than it is now for him to go before a grand jury and accomplish the same purpose? I do not see that you advance one step by that proposition. A man has the same right to work out his spite and the same opportunity that he has now under the grand jury system Now, if that be not the case—if a citizen will not be allowed, if we do away with the grand jury system—if he will not be allowed to go into court and lay his information, why, then, it all devolves upon the prosecuting attorney, and I do not believe there is a man in the territory, or the state of Montana, who would want to be responsible, personally and politically, for the prosecutions that are laid—and, as we know, three-fourths of them are unfruitful A large proportion of them, as shown by the records, have resulted in the acquittal of the defendant, and the prosecuting attorney, whoever he may be, will be charged up with the institution of the case, and he will be blamed for it. I do not believe there is a prosecuting attorney in the Territory who would want to hold that position under that system. I am in favor of leaving a clause, possibly, in our Constitution, that a grand jury of five or seven or nine men may be impanelled at any time to investigate the county offices and to take the responsibility of these indictments whenever it may be deemed advisable by the district judge.

Mr. Clark, of Silver Bow: I desire just simply to say a word of explanation as to my position. I believe that I stated that these proceedings before a grand jury were ex parte—that they were inquisitorial. It is a sort of Star Chamber proceeding, where a man has no chance on Earth to defend himself. He cannot know even when they are proceeding against him; whereas, if the information be alleged against a man, and he be brought into a court of justice, it is an open court. He can bring his witnesses there, and he may defend himself, and remove, thereby, the cloud that might be hovering over his fair name and reputation. They are entirely different propositions. One is a secret inquisition, in which men called by the state are deliberating upon a man's act, without his knowledge, perhaps, and, as I said, they may be intent upon blackening that man's character for some personal consideration, and he is not allowed to bring his witnesses there to defend him. It is entirely different.

Mr. Joy, of Park: I would like to suggest, that under the laws of this territory at the present time, and as they have been for years, the grand jury has had the right to require the witnesses for the defendant, and to notify the defendant himself to come before the grand jury; and whenever in any case an indictment is not found, it never does come to light, so the man's name is not injured very much; and if there is an indictment found, he then has an opportunity to bring forward his witnesses and show that he is innocent of any charge whatever. I do not see that the fact that it is an ex parte proceeding cuts any figure in the case whatever. If there is no indictment found, the man is not injured very much. The grand jury is under oath not to divulge anything of what transpires in the grand jury room, and no one is likely to talk of what transpires in the session of the grand jury. If the Party charged is an innocent man, he is not injured to any great extent. If he is not guilty, he comes into court, has compulsory process for obtaining witnesses, and if any wrong has been done him he has every opportunity to vindicate himself and his honor.

Mr. Eaton, of Park: With reference to a single point. There seems to be some little difference of opinion as to just what line of procedure may be indulged in in a grand jury room. The gentleman who last spoke, for instance, says it is quite possible, and even proper, for a grand jury to investigate the defendant's side of the case—to bring in his witnesses, or even the defendant himself. With reference to that single point I am disposed to take exception, for this reason: As a member of a grand jury, I distinctly remember being charged by a judge, that it was highly improper to call in witnesses for the defendant at all, and absolutely improper to have anything to do pertaining to even a suggestion of bringing in the defendant himself. That was charged by the judge upon the bench. So much for that single feature. And with regard to the general feature, I only want to add a word, that I believe the grand jury system is an absolute inquisition, in that an indictment brought against a man, no matter how innocent he may be, sticks to him and clings to him, a stain upon his fair name forever; and that it is quite possible for a grand jury to bring an indictment against a person upon such evidence, that not one syllable will even be permitted to be uttered in the court room when the trial of the case comes up. I am opposed to the whole system on principle.

Mr. Collins, of Cascade: Mr. Chairman, to bring this matter clearly before the Committee, I move to amend the motion by adding "with instructions to report a motion which shall abolish the grand jury system"

The Chairman: The gentleman from Missoula moves that Section 8, with the substitute offered by the gentleman from Silver Bow (Mr. Dixon) be referred to the Judiciary Committee. Now, the gentleman from Cascade desires to add to that motion the words, "with instructions to report a section abolishing the grand jury system." The Chair will treat this motion of the gentleman from Missoula and the motion of the gentleman from Cascade as one motion.

Mr. Craven, of Lewis & Clark: Mr. Chairman, I trust this amendment will not prevail. This matter of the grand jury system is one of the important things for this Convention to settle. I do not wish this question to go before the Committee on Judiciary in any way curtailed or bound up by any vote that we may now take upon it. I want that Committee to act entirely free in the matter; not to be under any instructions or to draw any inference as to what the opinion of this Committee may now be; and give us all plenty of time, so that the matter may be thoroughly discussed and looked into before any inference of that kind be drawn from the present vote.

Mr. Marshall, of Missoula: Mr. Chairman, I desire to suggest that, according to my opinion, no prosecution for a criminal offense will be, or can be commenced without an ex parte and inquisitorial examination. And it seems to me that the question really now is as to whether that examination shall be made by a grand jury, or shall be made ex parte, when the affidavits are filed before the magistrate and a warrant for the defendant is applied for. Now the gentlemen take a very different view of the institution of the grand jury from what our fathers did at the time of the adoption of the Constitution of the United States. The Constitution of the United States, as originally reported by the Convention in 1787, had nothing in it about a grand jury; but the states, when they came to ratify that Constitution, proposed some seven or eight amendments that they considered important, made to preserve the rights of the people against the oppression of officers and of the government; and among them was the institution of the grand jury; and some of the states went so far as to propose that the ratification of the Constitution of the United States should be conditioned upon the adoption of this amendment. Very many came to the conclusion, finally, that they could not make that sort of ratification without endangering the Constitution, but in their state conventions, as I understand it, proposed these amendments to the Congress of the United States, and the first Congress submitted them to the states, and they were adopted. The grand jury system as presented to us in the Constitution of the United States, in Article 5 of the Amendments, in connection with other great rights of the people, says: "No person shall be held to answer for a capital, or otherwise infamous crime, unless under presentment or indictment of the grand jury, except in cases arising in the land and naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subjected for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor to be deprived of life, liberty or property without due process of law," etc. It was considered then that the grand jury system was a safeguard—a protection of the rights of the people against the power of public officers, of the public generally, and of the government; and it was inserted in the Constitution for that purpose. I have always believed that it had that effect to it—that men summoned from the different parts of the country, common citizens of the country, not sworn officers of the law, not prejudiced and bound to believe a man is guilty when he is charged, but the common people of the country; that the rights of the citizen are more clearly protected when it says that he shall not be prosecuted unless twelve of these common citizens of the country, summoned from different parts of the country, have heard the evidence—ex parte, if you choose, and inquisitorial, and all that—shall have probable cause to believe that man is guilty and ought to be prosecuted. And I believe the rights of the citizens are more clearly protected by the grand jury than if left to any officer to issue a warrant for his arrest. And so far as the stain is concerned, the indictment of the grand jury is only the charge upon which the warrant issues That charge must always be made. The evidence is there to warrant its issue. The character of the man is as much hurt whether it is issued upon the indictment of the grand jury, or upon affidavits of citizens generally, or any officer. I believe myself that the grand jury was intended, and has always been considered, as a protection of the rights of the citizen. I believe it has that effect to it. But that is not the only benefit of it. What is everybody's business is nobody's business. The grand jury, generally selected from different parts of the county and sworn to diligently inquire into the evidence and breeches of the law committed, is the body of the county. It is their special duty to inquire into it, and they are sworn to do it; and very few indictments probably could be found in any county that would not permit these inquisitorial investigations. But when it is everybody's business, no citizen wants to be a common informer, and generally no citizen will be an informer unless he feels himself injured, and probably feels malicious against the party against whom he is going to inform. And it seems to me, not only for the protection of the citizen, but for the protection of the country, and the punishment of offenses, that the grand jury is a good thing. And I do not believe with the gentleman from Custer that it is a relic of the barbarous ages. It was required by our forefathers to be put in the Constitution of the United States, because they believed it was a protection to the citizen. That is what it was done for. I believe that the amendment offered by the gentleman from Silver Bow (Mr. Dixon) is a good one It is not necessary, probably, that every offense should be prosecuted by indictment; but let it be prosecuted by indictment, or, before the man is held to answer in the circuit court, let it be examined or inquired into. I believe that is the proposition of the gentleman from Silver Bow—that the district courts have the right to summon grand juries. Let them inquire into offenses in the county which have not been inquired into, and let the district court summons a grand jury when it is necessary from his knowledge of what is going on in the county; and let a party be prosecuted, and only prosecuted, either when he is indicted by the grand jury, or after a fair examination before a tribunal of the country. And I shall, so far as I am concerned, support the amendment of the gentleman from Silver Bow.

Mr. Rickards, of Silver Bow: I move, Mr. Chairman, that when the Committee arise, they report progress, and ask for more time, and that we do now arise.

The motion was seconded.

The Chair put the motion and a vote being taken the same was carried.

IN CONVENTION

President Clark in the Chair.

Mr. Eaton, of Park: I move to take a recess until 2 o'clock.

Mr. Goddard, of Yellowstone: I move that when this Convention adjourn, it adjourn until 10 o'clock tomorrow morning.

The President: Before the motion to adjourn is put, the report of the Chairman of the Committee of the Whole will be received.

Mr. Callaway, of Madison (Chairman of the Committee of the Whole): Mr. Chairman, I beg leave to report that the Committee of the Whole have been in session on the consideration of General File No. 1, and they report progress, and ask leave to sit again.

Mr. Kennedy, of Missoula: I move that the report of the Committee be adopted.

The motion was seconded.

The Chair put the motion, and the same was carried.

Mr. Eaton, of Park: Mr. President, I now renew my motion.

The Chair: The question now is upon the motion of the gentleman to take a recess until 2 o'clock.

Mr. Whitehill, of Deer Lodge: I would like to ask leave of absence for this afternoon and to-morrow, Saturday.

The President: If there be no objection the gentleman will be granted leave of absence.

Mr. Goddard, of Yellowstone: I move an amendment to the motion to take a recess, that we now adjourn until to-morrow morning, at 10 o'clock.

The motion was seconded.

The Chair put the motion, and the same was lost.

The Chair then put the question on the motion to take a recess until 2 o'clock, and the same was carried.

Recess.

2 o'clock p. m.

Convention called to order by the President.

The Clerk called the roll.

The President: Upon taking a recess the Convention was engaged in the consideration of General Orders. Unless it be desired by the members of the Convention to take up the regular order of business we will proceed with the consideration of General Orders.

Mr. Stapleton, of Silver Bow: Before going into Committee of the Whole, Mr. President, I ask leave of absence until Monday.

The President. If there be no objection the gentleman will be granted leave of absence until Monday.

Mr Hartman, of Gallatin: Mr. President, I desire a like absence.

The President: The gentleman from Gallatin desires leave of absence until Monday. if there be no objection it will be granted.

Mr. Middleton, of Custer· I move you, Mr. President, that the Convention resolve itself into a Committee of the Whole.

The motion was seconded and carried.

IN COMMITTEE OF THE WHOLE.

Mr Callaway in the Chair.

The Committee was called to order by the Chair.

Mr. Dixon, of Silver Bow· Mr. Chairman, the question, as I understand it, now is upon the motion to defer the matter of the abolition of the grand jury system, and the different amendments thereto, to the Judiciary Committee for report to the Convention. It seems to me in regard to that matter that it is a matter upon which the Committee has some discretion, and I think we might as well consider it now while before us instead of delaying it by a reference to the Committee. I desire to say a word, and I shall not take up but a very few minutes. There seems, as I understand it, to be a general conviction that the grand jury system as at present, with the expenses that are attached to it—the necessary expenses in the matter of proceedings by indictment in every case, should be remedied, but exactly how that is to be done is a question upon which members differ. Now, in regard to this matter of abolishing the grand jury entirely, it is a very radical proposition. So far as I know, and I think I am correct in making the statement, there is not a state in the Union that has yet abolished entirely the grand jury system, and when we undertake to do that we are taking a step, which, although in the direction of reform, is one that is entirely too radical; and we are undertaking an experiment that I, for one, cannot countenance. The institution of the grand jury is a very old one. Its proceedings, the law relating to it and to indictments, is well settled and understood. If we throw that aside entirely—if we undertake to substitute an entirely new system for it, we are treading, I think, upon rather dangerous ground. Now, the substitute which I have introduced here is intended to, and I think does, apply to the subject in about this way. We do not abolish the grand jury entirely, but we reduce it largely in number, from sixteen men, as at present, of whom twelve must concur to find an indictment, to seven, as proposed here. However, as the matter of numbers is not important—it might be thought better to make it nine, of whom seven may concur; but that is simply a matter of choice. Now, it is proposed to retain this grand jury, but to make it necessary that crime should be prosecuted as a general thing by indictment. It is proposed here that crimes in the district court—criminal offenses—shall be prosecuted by information in two classes of cases; one is where there has been an examination and committment by a magistrate, and another is by leave of Court given for that purpose. So that this does not give any one county attorney, or any other person, the right to institute a prosecution in the district court; but it does, without the formality and dilatoriness of the proceedings by grand jury, after examination and committment by a magistrate, give the right to proceed by information, or, on the other hand, by leave of court, which would apply in that class of cases, for instance, while the court is in session, where it would seem superfluous, but where the court, being satisfied that a crime has been committed for which an information should be filed, should direct such information to be filed and no further proceedings would be required. But there may be cases arise, in times of public excitement, where, from a failure of the district attorney or any other officers entrusted with the administration of the law, attempts may be made to shield parties from indictment, or, rather, from proceedings in criminal cases where the management and accounts of officers should be investigated and looked into criminally; that, as has been said here, not being the business of any one in particular could be overlooked and neglected. For that class of cases, and to keep a guard and check over the district attorney, or any other officer, and see that he performs his duty, and to enable the grand jury when it may be necessary to look into cases that they have overlooked, or to which public attention has not been drawn sufficiently, or which there is not a disposition to prosecute, although they should be prosecuted, then a grand jury is summoned, and it may indict in any case. It is not restrained by the fact that there must have been first an examination and commitment by a magistrate; it will require no leave of court for them to proceed, but they may go on at once, and have the power to indict the district attorney, or the judge upon the bench, and thus exercise a supervisory power over these other officers, and see that as far as possible, none shall escape who shall violate the criminal law. Now that is the object of this provision. We retain the grand jury because we know the course of procedure in that body, and the indictment, and all matters relating to the practice, are settled by law; and we only call it when, in the judgment of the court, it is necessary. It is not a prerequisite to the prosecution of public offenses; it is only kept there for the purpose of calling them together whenever, in the opinion of the court, it may be necessary; and it certainly seems to me to be a necessary provision to retain. If it is not needed, as very likely it will not be more than once in one or two years perhaps, it will not cost anything. If it is needed, it will be needed, and in some cases needed very badly, and if there is no provision for it there will be no way of getting at it. The provision which I have introduced here, except in relation to the size of the grand jury, which I have reduced here because it seems to me really that nine men or seven men are just as good as sixteen men—but, with the exception of that and with the exception of the provision which it would seem now better to provide for in relation to one or two other matters—with those exceptions the provision is taken exactly from the constitution of California; and, as I said before, if we undertake to abolish the grand jury, we are trying an experiment that has not as yet been tried in any state of the Union. California, Wisconsin, and several other states—I do not know exactly how many—have adopted substantially the form which it is now proposed to insert here; but they have never gone to the extent of abolishing the grand jury; and if it be true, as the gentleman from Custer says, that it is the history of Wisconsin that a grand jury has never been called although the constitution authorizes it, it seems to me that that would be a strong argument in retaining this provision of the grand jury, although it may never, or possibly very seldom, be called into requisition. With these exceptions, reducing the number of the grand jury and providing for information to be filed by the court as well as by a magistrate, the proposition offered here is taken almost literally from that of California. Now, I believe, for I do not wish to discuss this matter further—but I believe, in regard to these propositions of reform, while there are a great many reforms needed and while there are a great many that can be made, if you undertake a radical reform it should be done carefully and circumspectfully. I much prefer, so far as I know anything about the matter, to take experience that has been acquired by action under certain laws or certain provisions of the constitution, without branching out wildly into some new and entirely different scheme that has never been tried before. And while I believe, as I said, that it is useless to require a grand jury to find an indictment in order to prosecute for crime, still I think there are cases where the intervention of the grand jury will be required; and if the institution is left in such a shape, so reduced in number and with no requirements necessary, certainly it seems to me to be a great deal better to retain that institution than to do away with it altogether and branch out altogether into a system that no state has yet undertaken to try (Applause).

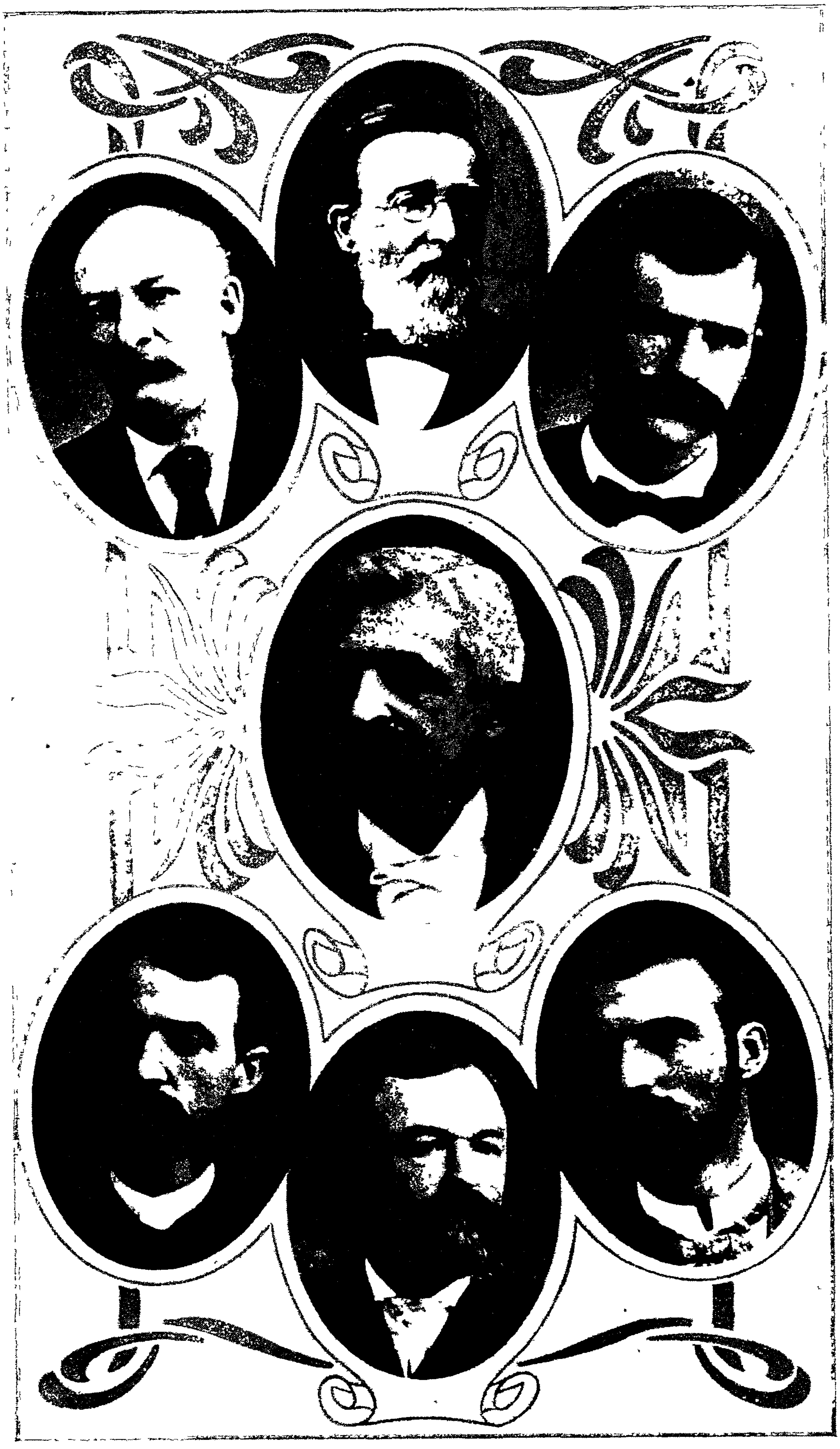
Mr. Whitehill, of Deer Lodge: I think that, in the main, I am in favor of the substitute embraced in Mr. Dixon's motion. I certainly am in favor of it, I desire simply to reply to the arguments of the gentleman from Missoula (Mr. Marshall). I believe that the idea he conveyed was, that, on account of Amendment No. V to the Constitution of the United States, wherein it says that "no one shall be held to answer for a capital or otherwise infamous crime, unless under presentment or indictment of a grand jury," etc., that that was applicable to all the states and territories, and that thereby we are prohibited from incorporating such a provision in our state constitution; at least, if that was not the idea conveyed, that it was a precedent for us to establish. Now, as a matter of fact, that provision has been incorporated in a great many of the states of this Union. It has been incorporated in the constitution of Arkansas, in the constitution of Connecticut, in the constitutions of Iowa, Louisiana, Minnesota, Missouri, New York, Ohio, Tennessee, West Virginia and some others; and it is incorporated there just as it is in the Constitution of the United States, and, of course, it would be impossible to abolish this grand jury system. But there are quite a number of the states where there are different provisions; and, as Mr. Dixon has said, there is not a state in the Union where the grand jury system has been abolished. In five of the states, that is, in Pennsylvania, Delaware, Kentucky, Alabama and Mississippi. it is provided that no person shall be proceeded against criminally by information. In Wisconsin the provision is that no person shall be held to answer for a criminal offense without due process of law. That is the provision in the Constitution of the United States, and under that provision, I understood from the gentleman from Custer, that a grand jury has never been called. Now the California provision is that offenses may be prosecuted by indictment or information after examination and committment by a magistrate. In some states the constitution gives the legislature power and authority to abolish the grand jury system, and that is the case with Indiana, Illinois, Iowa, Nebraska, Oregon and Colorado. And now I come to the question which the gentleman raises in regard to this being binding—this provision of the Constitution of the United States being binding on us, and that we cannot incorporate it here. That has been decided in a number of cases—two cases in the United States courts, and several cases in the state courts—that the provision of the Federal Constitution as to prosecutions by indictment or presentment to the grand jury has been held to apply only to offenses against the United States, and not to offenses against the individual states; and that has been decided, as I said, in the case of Missouri vs. Lewis, 101 United States, 22, and in the case of Hurtalo vs. California, 110 United States, 516. It has been decided in a case in Indiana; in two cases in California; in one case in Wisconsin; in one case in Kansas; and in one case in Mississippi. So that the objection of the gentleman from Missoula, that we cannot incorporate such a provision, has been decided by the highest courts of this land, and it is held that we have the right, if we see fit; but no state in the Union has seen fit as yet to do more than the State of California. That comes nearer abolishing it than any of them, but it leaves it so that a grand jury may be called in each county once a year. As a matter of fact that virtually abolishes it, because it is seldom, if ever, called; and that is just what we desire to do here. There may arise cases when it will be necessary, and when nearly everybody will be anxious that this grand jury should be invoked. Now, this system does away with the objections of the gentleman from Silver Bow (Mr. Clark). I agree with him absolutely, and am very much in favor of abolishing this system as an inquisitorial proceeding—a Star Chamber, where people are injured, as the gentleman has said; but if there is any good in this system of the grand jury, we retain it; so that it is a compromise really between the gentlemen who are in favor of the grand jury system and those who are in favor of absolutely abolishing it. It does away with the objections of those in favor of abolishing it, and it retains all the good points, if there are any, in the grand jury system. For that reason I am greatly in favor of the proposition, or the substitute offered by Mr. Dixon.

Mr. Middleton then called for the reading of the substitute again, and the Clerk read same.

Mr. Burleigh, of Custer: Now, Mr. Chairman, while the gentleman from Silver Bow (Mr. Dixon) may be correct in the position which he has assumed, I think his reasons are a little bit "fishy"; and I will state here that I do not believe that there is the slightest danger of a district attorney, who must be a member of the legal profession, and is presumed to be a man of honor, who is elected to that office and takes his oath of office to discharge his duties with fidelity, the same as a district judge does—I do not believe there is any danger of his being corrupted or of failing to do his duty, his whole duty, in the prosecution of criminals. And, as one of the district attorneys, duly elected by the people, I wish to say, that if that is intended as an aspersion upon those gentlemen as a class, or upon any one of them individually, I stand here to repel it; and while I do not profess to be more honest and conscientious than my neighbors, I do assert and maintain that there is not a man on the bench, or at the bar, in any county of this Territory, who endeavors to administer the law more faithfully than I do. Now let us come down to the practical part of it. There was a good deal said here this afternoon about the grand juries' operations. It is, and always has been, an inquisitorial body of the strictest kind, acting in secret, and so designed to act in that way, without assuming the responsibility of its acts, because they were done in secret. It was provided that the grand jury should be organized and it should be a strictly inquisitorial body, doing its work in secret; and its oath says that none of its secrets should be disclosed. I trust that system under the enlightenment and advancing civilization of this period of the Nineteenth Century, when every man is supposed to be independent and when every man is allowed to assert his rights under the Constitution, will wholly disappear. If any man is offended—if he is injured—if he sees an offense committed, he has a right to go before a committing magistrate, a justice of the peace, or any other authorized magistrate, and make complaint against the offender, and have him brought up there, and, if probable cause appears, he is held to answer, where? To the inquisitorial body of the grand jury? No; but to the court itself; thereby dispensing with the necessity of grand juries, which have entailed such enormous expenses and such debts upon our counties. What is there to prevent a man from going out here and proposing a charge against his derelict neighbor who has assaulted his wife or children, who has assaulted an honest man in broad daylight, and accusing him of the crime? The magistrate who sits there, clothed with all the panoply of his office, under the sanction of his oath, after hearing both sides, and after having provided the accused with an attorney, as he is bound to do under the law as it now exists, finds the man guilty and holds him for the crime. Is it necessary then, in order to ascertain whether that committing magistrate has done his duty, and incur the further expense of a grand jury? By no means. Let the accused go up and face the court like a man, and, if he is innocent, prove his innocence. Now there was something said this morning about this dangerous man having power to nolle the indictment in case he was a corrupt man. There is nothing of the kind here. It has been the custom here, through the wisdom of the man who founded the law, that no indictment shall be nolle prossed except on order of the court, upon ground stated. Apply that ground to the preliminary examination of the magistrate, before whom the man is to answer, and you have all the safe-guards. Now one of the arguments that have been used here in favor of this municipality of districts, is that in consequence of getting rid of the probate courts—in consequence of getting rid of the clerks of the probate courts and this burdensome grand jury system—we would actually reduce the expense of running our courts here—one in each county at a less expense than we have been running them heretofore. I believe that is true, but I do not believe there is any necessity of holding on to this fossilized, defunct end of an old system, for fear of cutting loose and making a new departure. We are making a new departure. We are starting out here, leaving the swaddling clothes of territorial government and territorial vassalage behind us, prepared in the full panoply of manhood to start out and run a state upon patriotic, lawful and safe principles, without anything to drag us back to the imbecility of the past. Now I think my friend—Mr. Dixon—who is one of the finest lawyers in this country, one of the most eloquent of the gentlemen who adorn this country, and a gentleman of whom I feel proud as a citizen and as a professional brother—I think he has seen something that is frightening him from the true course of political consistency here, and wants to hang on to this old relic that we want to get rid of on the ground of the speedy administration of justice and upon the ground of political economy.

Mr. Robinson, of Deer Lodge: Mr. Chairman, upon a careful consideration of the substitute offered by the gentleman from Silver Bow, I am disposed to adhere to that. There was one little proposition advanced by the gentleman who last addressed this Convention, the entire details and practical effects of which he has perhaps lost sight of; that is to say, that if we do away with the system of grand juries entirely, and leave it to the prosecuting officer to prosecute all cases where a committing magistrate has bound the party over to appear before the district court, I regard it as a very unsafe procedure indeed—very unsafe. I have had occasion to notice those things very critically and carefully. If you adopt a rule making it incumbent upon the prosecuting attorney to prosecute in the district courts all parties bound over by a committing magistrate, then you would entail almost as much useless expenses upon the respective counties and districts in Montana as you would by the system of grand juries, because it is a well known fact to those who have observed, that notwithstanding that the testimony on either side may be submitted to the average committing magistrate, with all deference to their judgment and the panoply of their official position and oath, with all due deference to that, it is patent that, in a very large majority of the cases in which they bind the parties over, they mistake the case entirely; because they bind parties over to appear before a grand jury when any good lawyer examining the facts in the case would see the utter impossibility of reaching a conviction; and that thing occurs in perhaps half the cases which they bind over. Then a system which requires a prosecuting attorney to appear in the district court and summon all the witnesses on either side of that case, and subject the county to the expense of it, would entail an enormous and unnecessary expense; besides that, it would be the very thing exactly that we desire to avoid, and that is to harass and annoy men who are not guilty of the charge against them; that is one of the cases that we desire to avoid as much as we possibly can—to avoid subjecting innocent parties, or even if they are guilty, where there is not sufficient evidence to reach a conviction—to avoid the expense of a prosecution, and to avoid harassing them with a prosecution. Now then, I say that if we adopt any rule that will make it incumbent upon the prosecuting attorney to prosecute in the district court every man who is bound over by a committing magistrate—then I say, in order to shun one evil we are jumping into a greater one, or as great. Now it seems to me that what is contemplated by the substitute provided for that exactly—that is, the prosecuting attorney may prosecute parties who are committed by a committing magistrate, or, where they are not committed by the committing magistrate, in either case it leaves it discretionary with him, subject to such legislation as may be prescribed. It is well known, too, that it will not do to rest these prosecutions only on cases where a committing magistrate has bound the parties over, because it is a well known fact that there are a large class of cases that never reach a committing magistrate or justice of the peace, and yet the public interests demand they should be prosecuted. Therefore, I say it is the better policy to leave all these matters in the sound discretion of the prosecuting attorney, who is the best judge of the character of the case, and who knows whether the party can be brought to a successful conviction. Leave it to his discretion entirely upon that, who is the best judge of all those propositions. That is what this substitute contemplates, as I understand it. Then, in order to meet a class of cases—with all deference to the class of men who may be elected prosecuting attorneys to guard against improper influences being brought to bear upon time-serving men—because it will not always do to follow out the theory, for the theory and the practice of it, we are taught, are two separate and distinct things, and practice will not always carry out these things—the prosecution is that we are always going to have prosecutiong attorneys who will come up to the mark, who are good lawyers, and who will do exactly what is right without fear, favor or affection; but, as a matter of practice, we know that we cannot always get such men, and we should guard against the possibility of such calamities as that. Then I say, let us adopt a system in our Constitution by which we can steer clear of these evils, and it will be a protection to prosecuting attorneys as well; it will certainly be most gratifying to them to know that, being invested and clothed with this sole power, there is a tribunal standing behind them, so that they can say to men who think they have refused to prosecute men that they think should be prosecuted—they have something to fall back upon, and they can say, "gentlemen, if you think this man for any reason should be prosecuted against my judgment, here is a tribunal and the case can be submitted to that tribunal." It is a shield and a protection to prosecuting attorneys, and it puts them in a better position to inspire the confidence of the public and to perform their duties properly. Then let us guard against these evils that may come, not predicting that they will. It is the dictate of wisdom to guard against those contingencies that may arise I can forsee them as plainly as I can see the face of the presiding officer of this Committee. Experience has taught that these men occupying official positions will not always do just what is right. Why sir, as an illustration of that, the Congress before the last passed a law providing that the fees of officers should not be increased or diminished during the term of office. Our Legislature last winter passed a law increasing the fees of some of the officers. As it is understood, I presume the proper interpretation of it would be that that law would only apply to those who were elected or appointed before the next general election; but in spite of all of that, my observation has been that every solitary officer had jumped in and charged the fees from the very turn loose under the new fee bill, in violation of this Act of Congress, thereby, under our law, subjecting them to a criminal indictment. If the temptation of officers and men is sometimes too great, human nature is weak and they will do it. Their judgment may be warped; sometimes they will commit errors of judgment not wilfully. And I say, let us, in these matters, guard against these things, and place a protection over prosecuting officers, and place it beyond the power of men to go to extremes. Who has not seen instances where communities have vibrated to extremes against officers who are faithfully trying to discharge their duties? Who has not seen the public clamor, or rumors, or misunderstandings of facts of this thing, that and the other, accuse men wrongfully of these things; and I can forsee where it is more likely to occur in cases of this character than any other; that in these criminal matters it often divides itself into cliques—one party in favor of the accused, or men who should be accused, and the other against the party. Communities will divide themselves upon it; rumors will be rife; exaggerated statements of fact will become rife, and the public will become excited, and they will get wrong impressions of it. They will be ready to accuse a prosecuting attorney of favoring this man, that and the other for business influences, political influences, money influences, that and the other thing. It places an honest prosecuting attorney in a very unfavorable position indeed—the man who desires to do his duty irrespective of friendship, fear, or favor—it places him in a very unfavorable position. Then I say, in order to enable this man to go fearlessly up to the work and do what is right, I say let us have some tribunal to stand behind him, that will be a refutation of false charges and false impressions that the public may gain about him as a prosecuting officer, and who can say to them, "Gentlemen, if I am wrong in my judgment about this thing, here is a tribunal standing behind me, a grand jury that may be summoned, and let them act upon the case, then, if they say I am wrong, I will cheerfully prosecute that case." It relieves him of responsibility in these cases, and for that reason I regard this as a very essential feature in our Constitution. Then it seems to me, taking all these propositions together, that the most rational and the best theory we can adopt is the one suggested by the gentleman from Silver Bow (Mr. Dixon) as a substitute for this bill. Upon mature deliberation, and the experience I have had as a prosecuting officer, and watching these things as carefully and closely as I have done, I say it is better all around to retain that much of what has been regarded by some gentlemen as a fossilized remnant and a relic of barbarity. The gentleman from Missoula County has used the very language that I desired to express to this Convention. He gave the fairest exposition of the grand jury system—the way a great many who laid the foundation of our government reviewed that thing; they considered it carefully and thoroughly. All these things are subject to abuse, but it seems to me that the gentlemen who took the opposite side have vibrated to something of an extreme in condemning the grand jury system. While I am opposed to its general use, I believe the state will be subserved by retaining it to the extent of the substitute that this Section 8 contemplates.

Mr. Luce, of Gallatin: Mr. Chairman, the only excuse I have for offering any remarks at this time is that I think this is one of the most important questions that will come before this Convention, and I have very little to add to what has been said by the gentleman who preceded me and the mover of this proposition. I can conceive instances where it would be necessary for the rights of the people, for the due execution of the criminal laws of the land, that there should be a grand jury behind all of these prosecutions, or, rather, examinations before committing magistrates, or informations that may be presented by leave of the court. Now, sir, let us suppose—and it is not very much of a stretch of the imagination to suppose magistrates who are not familiar



JOSEPH E MARION
J. F BRAZELTON

WILLIAM H. WATSON
WILLIAM W DIXON
WILLIAM A CHESSMAN

WILLIAM T. FIELD
DAVID G. BROWNE

with the criminal laws of the land; I have seen those that were not as thoroughly cognizant of it as my friends from Deer Lodge or Silver Bow counties—and the prosecuting attorney has made out a very good case, and through the stupidity of the magistrate the accused is discharged. Now, then, if the people of that community think there has been a violation of the criminal laws of the land and would desire to have that party punished, the grand jury may take up such a case as that. Again, it frequently occurs that, after an examination before a committing magistrate, further evidence has been found, and there should be occasions, or means rather, to meet such a case at that. I think a grand jury that may be called in the discretion of the court is just exactly the body for all such cases as that. Then, again, there is another thing which seems to me to be overlooked. There are certain proceedings in the examination of criminal offenders that certainly should be kept secret. I will instance simply this matter of the Cronin murder in Chicago, where for weeks a special grand jury investigated all the charges. Now then, it is necessary before an examining magistrate, under our system of jurisprudence, that the examination should be open to all the world; and the criminal himself becomes cognizant of everything against him. If he finds that it is light and he can fix it, he stands and takes the charges; but, otherwise, you will find him in Canada or some other country. There are cases of that kind that should go before the grand jury; and, as was suggested by the gentleman from Silver Bow county, there is no expense attached to this method unless the grand jury is called into requisition; and it seems to me that if they were called, say once a year, it would not be very burdensome to any county. There are—and I will repeat it—there are cases where there should be Star Chamber investigations—secret investigations; otherwise the arm of the criminal law is weakened; men may escape justice; and I think, taking this all in all, that it would be dangerous to abolish all together the grand jury system. I would be willing to compromise and say that five should compose a grand jury; but we should have some body that could be called to meet cases that might be evaded or might be passed over—the cases where they might not be properly investigated by the committing magistrates or the prosecuting attorneys. I say that somebody—some collection of men or grand jury—you may call it what you please; if you object to the name of grand jury, call it some other name—but that some collection of persons intended to meet such exigencies as I have mentioned should be maintained in every system of government.

Mr. Bickford, of Missoula: Mr. Chairman, I desire to withdraw the motion made by myself, before a recess, to commit this matter to the Judiciary Committee for report.

The Chairman: The gentleman withdraws his motion.

Mr. Carpenter, of Lewis & Clarke: Mr. Chairman, the motion before the House is the proposition or motion of the gentleman from Silver Bow. On that I wish to say one word and I will offer an amendment to it—or rather, a substitute for it. I will read the amendment for the information of the Committee, but I will call the attention of the gentleman from Lewis & Clarke to the fact—(interrupted). If the substitute is not in order—(interrupted)

The Chairman: The first amendment was the one offered by the gentleman from Silver Bow, Mr. Clarke, and the next was the substitute offered by the gentleman from Silver Bow, Mr. Dixon, which becomes the second amendment; and a third amendment is not in order.

Mr. Carpenter, of Lewis & Clarke: I understand the motion of the President of the Convention is the original motion. The motion of the gentleman from Silver Bow, Mr. Dixon, is the amendment, and this is an amendment to the amendment.

Mr. Goddard, of Yellowstone: My understanding is that the original motion made by the gentleman from Missoula County has been withdrawn.

Mr. Collins, of Cascade: Mr. Chairman, my motion to refer to the Committee on Judiciary, with instructions to report a section that would abolish the grand jury system, has probably been lost. As my motion does not seem to be before the Committee, I would like to say a word upon the motion of the gentleman from Silver Bow, Mr. Clarke. Now, Mr. Chairman, I believe it should not be the exclusive right of the members of the bar to settle this question. We all feel proud of the Judiciary Committee of this Body; no better one could have been organized or put into working order in any one of the great states of this

Union, and this Convention and the people of Montana should feel proud of it, but, notwithstanding that fact, I claim that upon a question of this kind, the members of this Convention who are not members of the bar are as well qualified to judge by past experience of this matter as they are. I claim that because the members of the bar are almost unanimously in favor of this proposition, they should not by their fine arguments and glib tongues convince all the balance of us that we should go with them. Now sir, I believe that aged lawyers, and learned lawyers—men who have retired from the practice—men who have written text books upon legal subjects, and who have written special articles upon this subject in the great magazines of this country, almost unanimously agree that it would be a step in the right direction—a great reform—to abolish the grand jury, and almost abolish the petty jury. Now, if that is the case, and if in conjunction with that a half dozen or more of the great states of this Union have virtually abolished the grand jury system, and have gotten along very well without it, then I ask why in all reason should not the State of Montana advance in the reformation of the judicial system of the country and also abolish it. I believe that the attorneys at law, taken as a class, are the most conservative citizens in the United States; that it is harder for a lawyer to jump out of the beaten rut, no matter how far back that rut may have originated—no matter in what times or under what circumstances it was commenced—it is harder for a lawyer to jump out of that rut than any other class of citizens in the United States. I believe, as a fact, that it is a good thing for the United States that such is the case; but upon questions that other people can judge of, it seems to me that the opinion of lawyers should not prevail. The arguments of the gentlemen who have talked this forenoon upon this question it seems to me are conclusive that the grand jury system should be abolished, and I believe that is the voice and opinion of the people of Montana; that opinion is voiced by almost the unanimous community in favor of the abolition of that system I believe I have heard an expression from nearly half the laymen of this Convention in favor of the abolition of the grand jury system; I have heard an expression from a number of the attorneys in favor of the abolition of that system; and I hope that, when it comes to a test, that this matter will be referred to the Judiciary Committee, with instructions to draw such an iron clad section as shall forever abolish it and give us in lieu of it something else. If that is the view of the Convention, I believe it is the proper course to take, and I will say here and now that when they do pass upon the matter and introduce that section, I believe that every citizen of Montana will feel that the section is perfect, and that there is no danger of a great radical change or a great disruption of judicial proceedings because that section abolishing the grand jury is incorporated in our Constitution. I, for one, hope that this will be looked at from every point of view, and that the majority of the Convention will vote in favor of abolishing the system. I can conceive of no case on earth, under any circumstances, or in any country, where it requires the examination of a grand jury. It may be possible that county affairs and county boards and county proceedings may have to be examined by commissions, but, if so, it can be provided for by law; but in other matters certainly, and upon a fair trial before a committing magistrate, or, better still, a perpetual session of the court, and a production of the offender, upon information, before the court, would be a move in the right direction, and a great reform in our present judicial system.

Mr Toole, of Lewis & Clarke: Mr. President, I quite agree with the gentleman from Cascade, that this is a matter that does not interest exclusively the lawyers in this Convention, but that it is a question which closely concerns every citizen of the Territory of Montana. I am not satisfied with the grand jury system, and believe, I think with the majority of this Convention, that if not absolutely abolished, that such a provision should be put into the Constitution as will authorize its assembling only in case of necessity. The gentleman from Cascade says that he cannot imagine of any case where it would be absolutely necessary to call a grand jury. Take, for instance, the suggestion, which was a potent one, by the gentleman from Gallatin County (Judge Luce), who suggested that where a committing magistrate should after hearing the testimony presented to him, decide that the party ought to be acquitted, and thereupon his discharge was had. Now, everybody knows that committing magistrates and justices of the peace are selected without reference to their qualifications, that is to say, they are not selected with reference to their being learned in the law, and that it frequently happens that justices of the peace and committing magistrates discharge individuals accused of crimes when subsequently grand juries not only indict them, but they are tried and convicted. Suppose we abolish the grand jury system entirely, and are remitted simply to this process. A man commits a felony; a trial is had before a justice of the peace; no jury is had; it lies within the province of the committing magistrate to determine whether that party is guilty, and the committing magistrate decides that the party is not guilty and he goes scot free. But aside from that, as was suggested by Judge Dixon this morning, we are acquainted with the decisons and rules of the common law with reference to indictments. Suppose we absolutely abolish the grand jury system, which takes with it as a matter of course, the indictment, and we have nothing left but an information. That is not a proceeding at common law. It has no significance or definition by which we are to determine what it contains, and during the period of time from which this State shall be admitted into the Union upon the proclamation of the President of the United States, up to and including the time that the legislative assembly shall determine what shall constitute an information, we will be left without any remedy or process by which criminals can be brought to justice. Aside from that again, I believe, and my experience I think justifies me in the statement, that there are times, sir, of great public excitement and popular indignation, when the passions of men and of citizens are aroused, when the prosecuting attorney and the officers of the court need to be sustained, upheld and fortified by an indictment brought by a grand jury and, as was suggested, where officers themselves, the sheriff, the constable and others in authority, shall neglect and fail to perform their duty, the fact that a grand jury can be called by the judge of the court, is a wholesome provision, and one which would operate, I think, properly, in forcing upon those officers the fact that there was some authority by which their acts might be brought to the attention of the court. Now this is simply a provision, such a one as exists in several of the states of the Union where they have seen fit not entirely to abolish the grand jury. I believe that our experience will be in keeping with that of the other states that have adopted this provision, that the grand jury system will be virtually abolished and be a dead letter but I think it quite proper, as suggested by all of the gentlemen who have advocated the retention of the grand jury system, that we keep it in reserve to meet those conditions that we cannot at this time anticipate.

The Clerk was directed to read the substitute once more, and read as follows:

Sec. 8. Criminal offenses of which justices' courts and municipal, and other courts inferior to the district court, have jurisdiction, shall be prosecuted by complaint. Criminal offenses of which the district courts have jurisdiction shal be prosecuted by information, after examination and commitment by a magistrate, or by leave of the court, or by indictment without such examination or commitment or without such leave of court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment A grand jury shall only be drawn and summoned when the district court judge shall, in his discretion, consider it necessary, and shall so order.

Mr Clark, of Silver Bow· Mr. Chairman, I have no desire to take up the time of the Convention, as I expressed my views upon this subject this morning, but I wish simply to say a word, and I believe I am entitled to close this debate. If I held to the principles advocated by the gentleman from Deer Lodge and the gentleman who has just addressed you, from Lewis & Clarke, I should certainly be in favor, not of the substitute offered by the gentleman from Silver Bow, but I should be in favor of the clause as reported back by the Committee on Preamble and Bill of Rights. Their arguments have tended in the direction of supporting that proposition, and not the substitute offered by the gentleman from Silver Bow, which, as I take it, is simply a little reserve, to be held in cases of emergency if the emergency should ever arise Now, these gentlemen are arguing upon the main proposition and not upon the substitute. I have no disposition, gentlemen, to cling to the memories of the past I know we are apt to cling with veneration to those forms and customs which have the dust of time upon their brows, and while

I am willing to give due credit to those immortal ancestors who framed the Constitution of the United States, we must bear in mind that they lived in an age different from this that they had just emerged from a monarchical government and that we have made the progress, and a remarkable progress, of almost a century and we must recollect that they lived at a time and in an age when human slavery was recognized almost all over this country; at a time when a respectable community, a peaceable, intelligent, well educated community in Massachusetts, directed the burning of people for witchcraft; and I say that we have advanced from that period, and this country has seen a remarkable and wonderful development; and why should it not in these matters which pertain to the judiciary of this country? I have not heard a single argument advanced by these gentlemen that is, in my mind, conclusive that this dark blotch upon American civilization should be retained in the judiciary of this country. If we were to narrow down the information to the prosecuting officer it might be different; but I understand it is the contemplation of this measure that any man may lay an information against a criminal and have him arrested. This simply provides, as I understand it, that in the discretion of the Judge, should emergency arise, a grand jury may be impanelled to investigate measures of this kind. Now, it has been stated here that there are several states—I believe the state of Wisconsin, if I am not misinformed, and the state of California—have adopted provisions very similar to this which we shall adopt if the substitute of the gentleman shall prevail; but we are informed here that there has been no opportunity presented, and no occasion presented for calling this grand jury into requisition in the state of Wisconsin; and I believe, gentlemen, that the time has come when we should discard this grand jury system. It is cumbrous, it is expensive, it is inquisitorial, it is ex parte, it is one of the remnants of barbarism that has been entailed upon the institutions of this country; and I, for one, am ready to believe in the intelligence and integrity and the good sense of the people of Montana and I say that, while these people have been hesitating to throw this odious proposition overboard, although they have almost concluded to do so, let Montana take a forward step and cut the thread that binds us to the barbarous past.

Mr. Sargent, of Silver Bow: Mr. Chairman, I have listened with a great deal of interest to this grand jury discussion, and I have learned more about it than I ever knew before. It is true that some of the information gained does not coincide with my observation or experience. I had no idea that the grand jury system was such a system of odious iniquity, devouring the reputations of innocent people. I have been on grand juries of different kinds, and I cannot recall any instance where any innocent person has been injured. I can recall a great many instances where there has been a failure to bring guilty ones to justice, where the evidence was not sufficient to convict. As I have listened to the charges of the great crimes which have been committed in the name of the grand jury against innocent persons, I have gone back in my mind and peered into the past to see if I could recall any instance of that kind, and I have failed to do so. I have also been surprised to hear that the grand jury system is a relic of barbarism. I am not very well versed in history, but I had an idea that our jury system was the outgrowth and result of Magna Charta, that great charter which was wrested by the barons of England from the king, in the 12th or 13th century, and was the first mortal blow to the idea of the divine right of kings, and was the entering wedge which has grown and spread and resulted in the freedom which we enjoy here. I am not one who advocates that the old ways are the best ways because of their age; but I believe all established usage should be carefully weighed and considered both as to its near and as to its remote results; because, if once embedded in the Constitution, it will be very difficult to expunge it, and I think that the power which it is contemptated by this resolution to take from the hands of sixteen men and put into the hands of one man is in the direction of centralization, and that it would be less satisfactory and more liable to abuse than the system now prevailing. I am not in favor, therefore, of the abolition of the grand jury.

The Chair then put the motion on the question of the substitute offered by the gentleman from Silver Bow, Mr. Dixon, and a division being called for, the substitute was declared carried by a vote of 53 to 10.

Mr. Carpenter, of Lewis & Clarke: Now, Mr. Chairman, I offer the following:

The Clerk read as follows:

Amend Section 8 so as to read as follows: "No person shall for felony be proceeded against criminally otherwise than by indictment or information, except in cases arising in the land or naval forces, or in the militia when in actual service in the times of war or public danger. In all other cases offenses shall be prosecuted by information or complaint."

Mr. Carpenter. Mr. Chairman, I offer that resolution, which is very much like the one adopted and very much like Section 8 as reported by the Committee, but in that proposition all legislation is stricken out I think, in the bill of rights, we ought to adhere strictly to certain principles, and discard all legislation that may be attempted to be interjected. The complaint principally made against the Constitution proposed four years ago was that there was too much legislation in it. We are proceeding in a way that will add to our Constitution to be adopted this fall perhaps a dozen pages more of legislation than the proposed Constitution of four years ago contained. I am entirely opposed to abolishing the grand jury system. It has come down to us for centuries as a shield and protection to the innocent, and the defense of the poor and weak against the strong and the rich and the powerful, and it is needed for that purpose as much in Montana today as it was in England four hundred years ago. But, at the same time, there is, I believe, among many, a feeling that proceedings by information would be preferable. This leaves it with the legislature to provide as it may see fit for criminal prosecutions by information in certain cases, and perhaps, if public sentiment should become so strong in favor of it as to warrant it, in all cases. It is very much, as I said, like Section 8, discarding the legislation. The complaints which I have heard have been ten times more pronounced against trial by petty jury than the inquisitions by grand juries. For these reasons, and because it is simple and accomplishes what I believe to be the sentiment of many with whom I have conversed in this Convention, I offer this proposition.

The motion was seconded.

The Chairman: I will state to the gentleman that, by the action of the Committee upon the substitute offered by the gentleman from Silver Bow, it takes the place of Section 8, and this would be an amendment to Section 8.

Mr. Carpenter, of Lewis & Clarke. This is now to amend Section 8—not the original one, but the one as adopted.

Mr. Dixon, of Silver Bow: Mr. Chairman, it strikes me that this is a substitute that does away with the force of Section 8 as it now stands, and which seems to have met the sense of the Convention. I do not believe in leaving this matter to the legislature; I believe in providing for it here. That does not abolish the grand jury, nor does it in any way prevent the numerous objections to the grand jury. Now, I am in favor of settling this matter here. Another thing that occurs to me in the consideration of such a section is that it provides that offenses shall only be prosecuted by indictment Now it might be held with very good reason as a matter of law, that an indictment would necessarily have to follow the indictment under common law, and that the grand jury would have to consist of that number, and that the proceedings in every case must go back to the proceedings that were legally necessary in a grand jury. I am not, as I said before, in favor of greatly modifying this grand jury system. It seems to me, however, a matter that should be decided here. I am opposed myself to putting any legislation in the Constitution, but this is a matter that ought not to be left in such a shape that it can be changed from time to time by different sessions of the legislature.

Mr. Carpenter, of Lewis & Clark. Mr. Chairman, I would say just one word. I think that goes almost as far as any constitutional provision you can find. If by degrees the legislature adopt the system of prosecution by informtion, and it works well, there will be no reason for proceeding further with the grand jury system. If we insert it in the Constitution they cannot change the system, but if we leave it to them for them to adopt, and legislate in regard to it as they think proper—if the system of prosecution by information works well, then it can certainly be continued; If it works badly, then it can be discarded; but until they do proceed by information the prosecutions should be by indictment under that section.

The Chair then put the motion on the amendment offered by Mr. Carpenter, and the same was declared lost.

Mr. Mayger, of Lewis & Clark: I would like to offer an amendment to Section 8, to increase the number of jurymen from seven to nine, making seven the necessary number to find an indictment

Mr. Collins, of Cascade: I move to amend by making it five.

The Chairman: The gentleman moves to amend Section 8 by increasing the grand jury from seven to nine. This is seconded. The gentleman from Cascade moves to amend by making it five in place of seven.

Mr. Collins, of Cascade: My amendment is that it shall consist of five persons, of which three shall concur to find an indictment.

Mr. Dixon, of Silver Bow: Mr. Chairman, that is a matter that does not seem to me really to be of very much importance, but it strikes me that a grand jury to consist of seven persons is enough. On the other hand—(interrupted)

The Chairman: I will state to the gentleman that the motion of the gentleman from Cascade is limited to five.

Mr. Dixon: It seems to me, although it is, of course, an expression of opinion, it seems that five should concur to find an indictment. I think a grand jury of five would be pretty small, and when you make it so small as that, it appears to me it might be objectionable in more than one respect. I am inclined to think that the number as it now stands in the amendment as adopted is correct.

Mr. Mayger: Mr. Chairman, I offer my amendment to Section number 8 for the purpose of having a sufficient representation. In a large county, like this county, where there are so many different sections of it, I think it would require as many as nine to represent the whole county. That is the only reason why I made the amendment to increase the number to nine instead of seven.

Mr. Collins: I think seven is about right and I therefore withdraw my amendment.

The Chairman: The gentleman from Cascade withdraws his amendment; It now recurs upon the amendment of the gentleman from Lewis & Clark, that the grand jury shall be composed of nine, and shall require seven to indict.

Th Chair then put the motion, and a division being called for, the amendment was lost by a vote of 21 in the affirmative to 38 in the negative.

The Clerk then read Section 9, as follows:

"Sec. 9. That treason against the State shall consist only in levying war against it or in adhering to its enemies, giving them aid and comfort; that no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; that no person shall be attainted of treason or felony by the Legislative Assembly; that no conviction shall work corruption of blood or forfeiture of estate; that the estate of persons who may destroy their own lives shall descend or vest as in cases of natural death."

There being no amendments to Section 9, the Clerk read Section 10, as follows:

"Sec. 10. That no law shall be passed impairing the freedom of speech; that every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel, the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact."

Mr. Winston, of Deer Lodge: Mr. Chairman, I offer an amendment to section 10.

The Chairman: The gentleman from Deer Lodge offers a substitute for Section 10.

The Clerk read as follows:

"Declaration of Rights. Sec. 10. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all suits or prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous was true, and was published with good motives and for justifiable ends, the party shall be acquitted and the jury, under the direction of the court, shall determine the law and the fact."

The substitute was seconded.

The Chair put the question on the substitute, and the same was declared lost.

Mr. Robinson, of Deer Lodge· Mr. Chairman, I desire to amend Section 10.

The Chairman: The gentleman from Deer Lodge offers an amendment to Section 10, which is as follows

Amend Section 10 by striking out the words "law and the" after the words "determine the," in line 4, and add after the word "fact" at the end of said line the words "and the court shall determine the law."

The amendment was seconded.

Mr. Robinson, of Deer Lodge· Mr. Chairman, I will state the object of that amendment As the original section stands it provides that the jury in these cases of libel shall determine not only the fact but the law. There is a section on our statute books to the same effect. I never could see any legal logic or philosophy in an action of libel where the jury determined the question of law any more than in any other character action. How and why it ever got there has always been incomprehensible to me. It seems to me, in a libel case, as well as all others, that the jury should determine the fact and the court the law; and the object of the amendment is to place it on the same footing or foundation as any other civil action, that the court shall determine the law and the jury shall receive the law from the court.

The Chair put the question on the amendment of the gentleman from Deer Lodge, and the same was declared lost.

The Clerk then read Section 11, as follows:

"Sec. 11. That no ex post facto law or law impairing the obligation of contracts, or retroactive in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the legislative assembly."

Mr. Carpenter, of Lewis & Clark· Mr. Chairman, I move to amend this Section 11 by striking out, in the first and second lines, the words "or retroactive in its operation." I consider it very important that the motion should prevail Under this provision it would be impossible to pass certain remediable laws which are very necessary. If a justice of the peace or notary public fails to qualify or performs an act in any irregular manner, it may become very necessary, to save the title to valuable property, in many instances, that the legislature should confirm the acts of that justice of the peace. Very often there are irregularities of that kind, and it becomes necessary for the legislature to act upon them and confirm them. There may be cases where a person is appointed to office, performs his duties, but the legislature may have neglected at first to fix the salary or afford any compensation, and any act of that kind would have to be retroactive. Now, as a general rule, I am opposed to all retroactive or retrospecive measures; but it seems to me that we would hamper the state in a way that would be very unpleasant and very injurious, and which might hazard the title of property in many instances where an officer had acted through some little neglect of form. The courts always hold an act prospective and not retrospective where it is possible to do so and there is very little danger of retroactive measures escaping the scrutiny of a court except in cases where they are necessary

The Chair then put the motion, and the same was declared carried.

The Clerk then read Section 12, as follows.

"Sec 12. That no person shall be imprisoned for debt, except in such manner as may be prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud"

Mr. Farren, of Silver Bow· Mr. Chairman, I offer the following, and would say that Section 13 of the old constitution seems to have been left out by the Committee for some reason or other. I think it should go in.

The Chairman: The gentleman from Silver Bow offers the following: After Section 12 in the report of the Committee, insert the following, and change the number of the succeeding sections to correspond:

"Sec. 13. The right of any person to keep or bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall not be called in question; but nothing herein contained shall be held to permit the carrying of concealed weapons."

The motion was seconded.

The Chair put the motion, and the same was declared duly carried.

The Chairman: This section will be inserted as Number 13, and Section 13, as it now stands, will be numbered 14.

The Clerk then read Section 14, as follows:

"Sec. 14. That private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and except for reservoirs, drains, flumes or ditches on or across the lands of others for agricultural, mining, milling, domestic or sanitary purposes."

Mr. Marshall, of Missoula: Mr. Chairman, I move the rejection of this section. I do not believe myself that this Convention has the power to authorize the legislature to take private property for private use. I believe that an act of the legislature doing so would be a violation of the Constitution of the United States, which says, "property shall not be taken except by due course of law;" and it has always been held, I believe—I have never heard of any state or any court holding that a legislature has the right to take my property and to give it to anybody else; and if they have a right to take it for one thing they have a right to take for any private use except it was prevented by this Constitution. The Constitution of the United States says, "public use"—"private property shall not be taken for public use without just compensation." But I know of no law which authorizes a legislature to take private property for private use; and it seems to me that it is the height of despotism for any one to take my property. Now I believe some court has decided that a private pass way is a public use; that, although it is for the especial benefit of a particular person, yet that anybody has a right to use it, and it is therefore for public use. Ditches and drains for irrigation purposes should be for public use, but if so the public must have the right to use it; and I do not believe myself that the legislature of any state has the right to take a ditch across my land, or that any person has the right to take a ditch across my land for his private use; I think not. I believe that the legislature of the Territory of Montana has an act that authorizes condemnation of private property, or the right to take a ditch across private property for the purposes of irrigation. Judge DeWolf, at the last term of the Missoula court, decided that that act was unconstitutional. That, of coure, was unconstitutional because they were acting under the Constitution of the United States, and it has been held always, that although private property might be taken for public use on just compensation being paid, that private property could not be taken, under the Constitution of the United States, for private use, under any circumstances, without the consent of the owner; and my own judgment would be that an act of the legislature passed in pursuance of this, unless the court should decide that the purpose of irrigation is a public use, would be unconstitutional; for it does strike me that it is the height of despotism to admit that any majority has any right to take my property and give it to anybody else against my consent, or has the right to damage my property for the benefit of anybody else; and I believe that no legislature should have the right to take private property for private use for any purpose; and I move to reject Section 13 of the report.

The motion was seconded.

The Chair stated the motion.

Mr. Maginnis, of Lewis & Clark: I do not know, Mr. Chairman, how the courts may decide a matter of this kind, but it seems to me that, if our valleys are to be occupied by farmers, that the section had better stand as it is.

Mr. Hogan, of Silver Bow: I was going to say, Mr. Chairman, that in Section 14 as it stands I do not see anything that authorizes the legislature to take private property unless with the consent of the owner; that is the way it reads.

Mr. Parberry, of Meagher: Mr. Chairman, I do not know that I thoroughly understand this proposition, and would like to understand it before I vote upon it. I find here in the Constitution of Colorado, under the head of Irrigation, the following: "All persons and corporations shall have the right of way across public, private and corporate lands for the construction of ditches, canals and flumes for the purpose of conveying water for the irrigation of agricultural land, and for mining and manufacturing purposes, and for drainage, upon payment of just compensation." Now, do I understand that the legislature by this act cannot enact such laws as to enable a person to force a drain ditch through a piece of land if the owner does not desire it? I think, under this Constitution of Colorado, that it allows any person owning land lower down on a stream to run a drain ditch through his land and the compensation to be determined by the courts; and that is what I understand by this same clause here.

Mr. Bickford, of Missoula: Mr. Chairman, Sections 13 and 14 should be considered together in determining this question. The intention of the two sections is that private property may be taken for private use upon the payment of just compensation to the owner of the private property; and the decision which Judge Marshall mentioned as having been rendered is perhaps the reason that the clause has been inserted in the manner in which it is here inserted. Under the law of eminent domain it has been held by many courts that, inasmuch as the constitutions of the different states provide that private property shall not be taken for public use without just compensation, that for that reason private property shall not be taken for private use under any circumstances. Now, sir, I deem it unnecessary to state to the members of this Convention that it frequently becomes necessary in the Territory of Montana for private property to be taken for what is in fact a private use; and that is particularly true in the case where, when one person owning a piece of land near another, finds it necessary to carry water upon that land for the purposes of irrigation—when that is done, or when the person who seeks to carry water across the land of another, he is taking private property for a private use; in other words, if I seek to carry a ditch across another man's land, no matter how much of a necessity it may be to me that this water should go across the land of another, it is nevertheless a private use. In order to avoid the difficulty which is encountered in other constitutions, this section 13, or 14 as it is numbered, in the report of the Committee was inserted here; in other words, it provides a way, upon the payment of just compensation to the party owning the property,—that is, property may be appropriated by the legislature. This, of course, does not provide the way; it simply gives the right, under such rules and regulations as may be prescribed by the legislature, for a private person to carry his ditch across the land of another for private use. We have numerous instances in our own county, where persons have sought to carry water across the lands of another, and they are met in every instance, not only by the constitutional provision in the enabling act of this Territory, but by the decisions of the courts, and by that old constitutional provision in the Constitution of the United states, which prevents them from carrying water on their land for the purpose of irrigation. It is not always true that the damage to the land crossed is of any great amount; but where there is not the best of feeling existing between neighbors, they seek to prevent persons from going across their land, no matter whether it is of any damage to them or not, and no matter whether the full amount of compensation is paid them or not. It is a means of oppression in a great many instances, as where a person is prevented from cultivating his own land when he cannot get water upon it. I apprehend we are differently situated in this matter than are a great many states of the Union, and that it becomes with us absolutely necessary to take private property for what is in fact a private use. The courts say that whether it is a private or public use is a matter for the courts determining the case; but the courts are not always right in determining these questions, and do not always arrive at right conclusions. And if the provision is inserted and acted upon by the legislature which hereafter meets in this proposed state. I apprehend some just rule may be provided by which private property can be taken for the purpose of running irrigating ditches across private land; and that the interests of the people will be subserved if this clause, or these two clauses are inserted in the Constitution. By an Act of the Congress of the United States, passed, I think, in 1874, the right of way for roads and ditches was given by the general government of the United States over all public land. A person who has been so fortunate as to locate his ranch and build his ditches before the title of that land has been acquired by somebody else, is in such a condition that he need not take advantage of this provision; but as our Territory becomes more thickly settled, it will become necessary more and more, each and every year as it rolls on, that private property should be taken for what is actually a private use Therefore I say, notwithstanding that we are getting beyond the point where many of the other states have gone, that we should introduce this innovation; we should take this step in advance in order that all the lands in the Territory may become available for agricultural purposes, where it is possible to obtain water upon them. Let us not throw a block under the wheels of progress, but rather urge the car along.

Mr. Knowles, of Silver Bow: I do not know what the sense of the Convention upon this subject is: It is a departure from the ancient land marks. But we live in a different country, and are surrounded by a different climate and a different soil from that which exists where the common law had its birth. Most of the constitutions of the states and the Constitution of the United States have retained this old provision that private property should not be taken for a public use without just compensation; and it has been held generally by the courts that private property cannot be taken for a private use at all. There has been some dispute as to the question of what is a public use, and hampered by a provision something like the old form, in the Constitution of Nevada, they have held that it was a public use for a man to go on to another man's land and sink a mining shaft, so that he could work his mine, or enable a corporation to do so. Now I pretend to say that that was traveling outside of the ancient land marks entirely. In relation to this question of irrigation, in Colorado they made a decision that a man had a right of way out of necessity. That is carrying that doctrine of right of way further than it has been carried by any other court that I know of. Now it seems to me that the way out of this is, as far as we can, to grant for these special purposes that are expressed here a power in the legislature to grant this right of way. It is necessary to the growth and prosperity of this country. If we ever expect to have great irrigation ditches and canals to irrigate this country, it is necessary that we should have that right of way; or somebody will stop every enterprise of that kind and black ball it on the start. There may be some doubt as to whether or not such a court as the Supreme Court of the United States would be disposed to hold, even if we cannot do this by virtue of the constitutional provision, that this is one of the rights that has been handed down to us by our fathers, but I find that in the Constitution of Illinois they provide there for condemning a right of way for drainage In Illinois they do not need water for irrigation, but they have so much water there in certain localities that they need drainage; and in the provision in their Constitution the legislature is given this right to enact laws for condemning for private individuals a right of way for drainage I have not observed any decisions upon that question, but I have thought of this matter for years. I believe that the courts are entirely right in this idea that the present law we have upon the statute book is in violation of the Constitution of the United States, although I believe there are two district courts that have decided that it is not, and that it is a public use for one man to have a right of way for a ditch over another man's land. But I do not believe that that is the correct interpretation of the law. But to set every matter at rest, as far as we can, for the benefit of the country, and looking to its future growth, we ought to establish, I believe, these two propositions. I looked over them more carefully than I have any other two provisions in this declaration of rights, and I believe that in the grant of legislative powers to the legislature, there ought to be an additional plank. This is trying just simply to let down the bars to let the legislature do what it can do; that is about all. A Declaration of Rights in a Constitution means nothing except that it either puts up the bars or lets them down. But it might be doubted whether or not, without a special grant in the legislative power, that the legislature could do this thing, even with this provision in the Declaration of Rights, and I think that, when the time comes, we will want to grant the power to the legislature to do just what is embodied here in this Bill of Rights I am certainly opposed to striking out those provisions, I believe in letting them stand.

Mr Maginnis, of Lewis & Clark Mr Chairman, I entirely agree with the gentleman in the necessity for keeping these provisions in the Constitution. New conditions and new necessities make new laws, and even the Supreme Court of the United States has been known to change front on many propositions In the decision of a certain mining case in this Territory which came before the Supreme Court of the United States, Justice Miller made the remark that if anybody had told him two or three years before that he would have put his name to a decision of that kind he would have told him he was a fool Now, in addition to these two sections, I think I shall offer the following: "The right of eminent domain shall not be curtailed, and the property of corporations shall stand upon the same principle as the right of persons."

Mr. Marshall, of Missoula I withdraw my motion, Mr. Chairman.

Mr. Luce, of Gallatin: This Section 14 can mean nothing It provides for the taking of private property for private use. It seems to me that the difficulty could be obviated by this Convention putting a section in this Constitution declaring what shall be a public use. Now, I undertake to say that, under the system of jurisprudence in this Territory, the construction of ditches across another man's land for the purpose of irrigation is a public use; that is, under our system; and also the construction of ditches and flumes across another party's lands for the purpose of mining. From the earliest history of this Territory it has grown up with this jurisprudence, and has become a part of the law of the land here and is a public use, and you will find it defined in the law upon eminent domain as to what is a public use, and that definition has always been acted upon. This decision that has been referred to is something new to me. Of course it might be repugnant to the Constitution of the United States, but the Constitution of the United States simply provides that private property cannot be taken for public use without just compensation. The courts have always denounced the idea of taking private property for private use, and always should, because if you open the door for one purpose it may be opened for all purposes, and no man would be secure in his property. But I think that this Constitution can define what a public use is, and make all these purposes for which it is intended that the use of land for reservoirs, drains, flumes or ditches for agricultural, mining, or milling purposes, shall be used for a public use, and you can get around all the decisions that have been made that denounce the taking of private property for private use. The matter of compensation comes afterwards. You cannot take private property for private use without due compensation, and it certainly can never be taken in this Territory except by due process of law. I do know that this Territory would dry up and die—would not be fit to live in, if we are curtailed in the construction of ditches across other people's lands. These lands are arid; they must be supplied with water; and I think that this Convention here has the power to declare what, in this Territory, will be a public use, and I hope that some gentleman who is more skillful with his pen than I am will frame such a provision as that, or, if the Convention will give me time, I will do it myself But by doing that you will not go contrary to any decision, because you define what a public use is, and you can condemn property for that use. In order that we may live and in order that we may have something to feed our cattle upon it is necessary that the construction of ditches should be considered a public use, even to the watering of a man's garden, for it increases the value of the property of the Territory; and certainly, in the working of mines, where drains are necessary, it should be declared to be a public use, and that the land of another may be condemned for that use, not as a private use, but as a public use. This section, as drawn, seemes to be in the teeth of the decisions of the courts, that private property cannot be taken for private use, and then you have the condemnation of the courts—even the Supreme Court of the United States—of this provision, wherein they have decided that it is unconstitutional. Recollect that the President has a right to review all these things, and if he finds that it is in contravention of the Constitution of the United States, he has the right to keep us out of the Union, and I think, for our own benefit, for the sake of coming into the Union as a state, and for the benefit of our people after we get in as a state, that there should certainly be uses here that have heretofore not been considered public uses by declaration or by this Convention, and I do not think anybody outside of the Territory or State of Montana has any right to question our views or authority upon any provision of that kind. This is simply for this Territory, without interfering with any rights of citizens outside the Territory or State of Montana. These are my views, and I hope that some such clause will be adopted.

The Chairman: The gentleman from Lewis & Clark has offered an amendment to this section.

Mr. Witter, of Deer Lodge: Mr. Chairman, I would ask if we cannot consider the two sections together first.

Mr. Bickford, of Missoula: Mr. Chairman, I would suggest that the two sections be considered together, and that they be consolidated and numbered as one section—numbered as Section 14.

The Chairman: The gentleman from Lewis & Clark offers as an amendment to Section 14, which is a consoildation of Sections 13 and 14, the following amendment: After the words "just compensation," in line 2, insert as follows, "the right of eminent domain shall not be curtailed, and the property of corporations shall stand upon the same footing as that of private persons."

The amendment was seconded.

The Chair put the question upon the amendment, and the same was declared carried.

Mr. Middleton, of Custer: Mr. Chairman, I would move as an amendment, that the two sections be consolidated, and that the word "Section," in Section 15, be striken out, and the word "provided" be inserted in lieu thereof.

The motion was seconded.

Mr. Kanouse, of Meagher: Mr. Chairman, I desire to offer an amendment to be numbered Section 15.

The Chairman: The gentleman from Meagher offers a separate section, to be numbered 15, to follow No. 14, "that the taking of private property for ways of necessity, for reservoirs, drains, flumes or ditches on or upon the lands of others shall be deemed and taken to be a public use.

Mr. J. K. Toole, of Lewis & Clark: I do not believe there is any proposition that will go into this Constitution that is of any more importance to the people of the proposed state of Montana than the proposition we are now considering, and I do not believe that anything that has been yet suggested or offered will obviate the difficulty, the constitutional objection, to taking this character of property for what will be determined to be, in all probabilty, a private use. I therefore move that the consideration of these two sections be omitted for the present, and that we pass on to the consideration of the other items in the Bill of Rights, in order that we may try and devise some means by which we can get rid of the difficulty.

The motion was seconded.

The Chair stated the motion of the gentleman from Lewis & Clark.

The Chair put the motion, and the same was declared carried.

The Clerk read Section 15, as follows:

"Sec. 15. That in criminal prosecutions, the accused shall have the right to appear and defend in person or by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed."

There being no amendments to Section 15, the Clerk read Sections 16 and 17, as follows:

"Section 16. That no person shall be imprisoned for the purpose of securing his testimony in any case longer than may be necessary to take his deposition. If he can give security for his appearance at the time of trial he shall be discharged upon giving the same; if he cannot give security his deposition shall be taken in the manner to be prescribed by law.

Sec. 17 That no person shall be compelled to testify against himself in a criminal case, nor shall any person be twice put in jeopardy for the same offense. If the jury disagree, or if the judgment be arrested after verdict, or if the verdict be arrested for error of law, the accused shall not be deemed to have been in jeopardy."

There being no amendments to Sections 16 and 17, the Clerk read Section 18, as follows:

"Sec. 18. That all persons shall be bailable by sufficient sureties except for capital offenses when the proof is evident or the presumption great."

There being no amendments to Section 18, the Clerk read Section 19, as follows:

"Sec. 19. That excessive bail shall not be required, nor excess of fines imposed, nor cruel or unusual punishments inflicted.

There being no amendments to Section 19, the Clerk read Section 20, as follows:

"Sec. 20. That the privilege of the right of Habeas corpus shall never be suspended, unless in case of rebellion or invasion the public safety require it."

There being no amendments to Section 20, the Clerk read Section 21, as follows:

"Sec 21. That the military shall always be in strict subordination to the civil power; that no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

There being no amendments to Section 21, the Clerk read Section 22, as follows:

"Section 22. The right of trial by jury shall remain inviolate in criminal cases, but a jury in civil cases in all courts or in criminal courts not of the grade of felony, may consist of less than twelve men, as may be prescribed by law.

Mr. Dixon, of Silver Bow: Mr. Chairman, I have a substitute for Section 22, which I desire to offer.

The Chairman: The gentleman from Silver Bow offers the following as a substitute for Section 22, as follows: "The right of trial by jury shall be secured to all and remain inviolate; but in all civil cases, and in all criminal cases not amounting to felony, upon default of appearance or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived or a trial had by any less number of jurors than the number provided by law. A jury in justice's court, both in civil cases and in cases of criminal misdemeanor, shall not consist of more than six persons. In all civil actions two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all of such jury concurred therein."

The motion on the adoption of the substitute was seconded.

Mr. Collins, of Cascade: I would like to ask the gentleman if the legislature can provide for a less jury than six before a justice of the peace.

Mr. Dixon, of Silver Bow: The substitute is for a jury of not more than six.

The Chair put the question on the motion, and the substitute for Section 22 was declared adopted.

The Clerk read Section 23, as follows:

"Sec. 23. Laws for the punishment of crime shall be founded on the principle of reformation and prevention, and not of vidictive justice."

Mr. Durfee, of Deer Lodge: I move to strike that section out. I do not see that it means anything.

Mr. Knowles, of Silver Bow: Mr. Chairman, I hope that we will not strike out that provision. The gentleman says that he does not see that it means anything. It does mean a good deal. It means that the punishment for crime shall be with the view of reforming the criminal, and with the view to prevent in the future, his committing the same crime. instead of incarnating him simply as a punishment, without any other object in view than to simply punish a man in a kind of spirit of revenge, he is put there for the purposes of reformation and prevention. That is all there is to it. The idea is that the punishment shall be somewhat with a view to reform the man, making him a better man, and especially in relation to our penitentiaries and institutions where men are confined who are to be punished for crime, that they shall have a tendency to make men better. If we are to put a man there, simply for the purpose of punishing him, in this age and with the name of God Almighty in our Constitution, that we shall be vindictive towards any man, be he criminal or otherwise, seems to me to be a preposterous proposition. I am opposed to striking that out and hope it will remain there as showing that we belong to the advanced age in regard to this matter.

Mr. Durfee, of Deer Lodge: Mr. Chairman, I cannot see that it would add any force to the idea that the punishment would be vindictive because declared so in the Constitution; and what effect or what force it would have on the criminal, or what effect it would have in the administration of the law—I mean this declaration in the Constitution—I cannot see; and as it would be simply superfluous and lumbering up the Constitution without any purpose, I see no reason why it should not be stricken out.

Mr. Bickford, of Missoula: Mr. Chairman, the Committee had this matter under consideration. They thought that perhaps it might not mean anything, and then again that it did mean something. Inasmuch as this is simply a declaration of principles, we thought it well to put the exception in there as a declaration of the people of this Territory, showing the ground upon which we punish crime—not, as Judge Knowles has well said, in a vindictive spirit, but in a spirit of prevention, and for the purpose of preventing the recurrence of the same crime, and that, as a civilized nation, we had some respect and something in common with the rest of the world. We want them to understand the principles upon which we base our laws. This is one of the progressive ideas of our present civilization, and one of the ideas which perhaps will shine as brightly in the years to come as any other—that our laws are based upon principles of humanity and not upon principles of revenge. I hope the section will stand.

The Chair put the question on the motion of the gentleman from Deer Lodge, and the same was declared lost.

The Clerk read Section 24, as follows:

"Sec. 24. No law shall be enacted which will prevent persons of foreign birth or residence from becoming the owners of mines or mining property, except under the restrictions contained in the laws of the United States relative to the location thereof."

Mr. Dixon, of Silver Bow: Mr. Chairman, I desire to offer a substitute to Section 24. If the Chair will permit me I will read this myself. "Strike out Section 24, and insert instead the following: Sec. 24. Persons of foreign birth or residence shall have the same right as native born citizens to acquire, purchase, possess, enjoy, convey, transfer and inherit mines and mining property, and milling, reduction, concentrating and other works and real property necessary for or connected with the business of mining and treating ores and minerals. Provided that nothing herein contained shall be construed to infringe the authority of the United States to provide for the sale or disposition of its mineral and other public lands."

Mr. Sargent, of Silver Bow: I move the adoption of the substitute.

The motion was seconded.

The Chair stated the motion.

Mr. Bickford, of Missoula, asked that the substitute be re-read, and the Clerk re-read the substitute.

Mr. Collins, of Cascade: Mr. President, I have some doubt as to whether that ought to be placed in the Bill of Rights. It seems to me that our liberties would not be curtailed by leaving that section out, and that it would be just as well, if it is to be incorporated at all, that it should be incorporated in some other place than the Bill of Rights. As a matter of fact, I cannot see that it is necessary that it should have any place in the Constitution It seems to me that every word and every idea expressed in that section is legislation pure and simple. At any rate there is not room for it in the Bill of Rights If it is for the interests of the State of Montana that it should be enacted into a law, it will probably receive the attention of the legislature, and as long as it is to the interests of the State of Montana that that should be a law it will doubtless remain upon our statute books. But I simply class that section as a broad and sweeping matter which does not refer in the remotest degree to our rights or our liberties, and ought not to be incorporated in the Constitution, more particularly under this head. Besides, the time may come, ten, fifteen or twenty years from now, when this proposition should be changed—this legislation should be changed—and it seems to me that if that time ever does come the people of Montana should have an easy and legitimate way of changing it. But, and any rate, if the members of this Convention insist that it shall go into the Constitution, let us put it in some more appropriate and convenient place.

Mr. Dixon, of Silver Bow. Mr. Chairman, I would like to state, in regard to this matter, that so far as I know, it is the general desire among persons who are interested in mines in this country that the restriction which is now placed by the law of the United States on this matter should be removed. I know, and every man who is connected with mining matters in the Territory knows that by that Act of Congress a great deal of foreign capital has been kept out of this country, which would otherwise come in here and be invested in our mines. It is a class of capital which is desirable, we want it to come here; it will benefit the whole country, and it will benefit every community. Now, as to the matter of putting it into the Constitution, if we make no provision whatever in regard to it, then we go back to the common law, and under that aliens cannot inherit or acquire property to hold it. So that, in the absence of any provision in the Constitution, we would stand in the same condition that we do now—that no sales of mining property could be made to aliens. There is another phase of this matter; it seems to me that this is a matter which requires a constitutional provision in order to give it some stability and security. If a man comes here from abroad and desires to put money into our mines and our mills, he certainly wants to have some reasonable security that the capital invested will be safe. If no provision is made in the Constitution for this purpose, it certainly would not give any alien very much security in his investments, but, on the contrary, leave them in rather an uncertain condition, and leave to every succeeding legislature to act about it as they choose.

Mr. Burleigh, of Custer: Mr Chairman, I would like to ask the gentleman if this substitute relates to mining property alone, or to all property.

Mr. Dixon, of Silver Bow. Only to mining property and property connected with mining.

Mr. Luce, of Gallatin: I do not understand the policy of making this exclusive of other property. We are offering to dispose of the public lands of the United States. It has been the policy of every state, I believe, to permit foreigners to hold property and inherit real estate, and I think this provision seems to be altogether too exclusive.

Mr. Clark, of Silver Bow: Mr. Chairman, I would say in reply to the gentleman who has just addressed the Convention that I believe it is generally considered an unwise plan to allow foreigners to come in and monopolize the public land of this country. That has not been disputed, I believe, among people who have been engaged in agriculture, and among people generally But, so far as mining property is concerned, we have had an illustration of the benefits of allowing foreign capital to be invested in this country, and of the disadvantages which have arisen under the operation of the alien law, as it has been termed, which now prohibits foreign capital from being invested in the territories of the United States. We have had several investments in this Territory prior to the operation of that law, and an instance of that, I believe, is the Drum Lummon mine, which was operated and has been operated by foreign capital. As the law stands to-day foreign captital is excluded from this Territory; and we know—gentlemen who are connected with mining enterprises know—that probably millions of dollars have been excluded from this country and have found investment elsewhere. I am personally acquainted with a number of extensive mining operators and promoters of mining industries who have solicited and obtained capital from foreign countries to be invested in the mines of the United States, and almost all of these gentlemen have left this country for a more profitable field of operation. We know that the great accumulation of capital in foreign countries has resulted in a very low rate of interest, and a rate of interest that would be favorable to those people would not be considered a rate of interest very favorable to the industries of this country. Hence it is well that the people of Montana should be allowed a certain liberty and scope in the sale of their mines to foreign capitalists who have plenty of money, thereby to induce them to come here and build large smelting plants and large mills and other enterprises of that kind, which would necessarily involve the expenditure of large sums of money and result in the fostering and development of other great industries in this country. Hence I agree with the spirit of this amendment and believe that it should be adopted.

Mr. J. K. Toole, of Lewis & Clark: Mr. Chairman, I am in favor of the adoption of this amendment offered by the gentleman from Silver Bow, and I concur in the suggestions of the gentleman from Silver Bow who last addressed the Committee that we need and want and ought to invite the acquisition, especially as directly connected with the development of the mining interests of this coutry, of foreign capital. It is known and understood that in foreign countries, and especially in Europe, many parties are now lending out large sums of money at low rates of interest, and that they are willing, and quite willing, to undertake the hazardous investments that sometimes accrue in mining operations, where the people of the United States, in many instances, are unwilling to make ventures. I believe that it will not be disputed that it is on account of foreign capital having been introduced into this country that much of our mining industry has been stimulated and our resources developed. But I am unwilling to go to the extent suggested by the gentleman from Gallatin, that this ought to apply to all real and personal property. It was the acquisition of the great agricultural sections of the country in Dakota and in Colorado that gave rise to the discussion of this question in the Congress of the United States, which resulted in the passing of the prohibitory act which prevented the Territories of the United States from disposing of the lands of the United States to aliens, and prohibited aliens from acquiring mining and other property into the United States. The Committee of Congress that had that Act under consideration simply considered it from the point of view of the agricultural interests, and the mining aspect of it was overlooked at the time of its passage by Congress. None of the reasons that operated to make it beneficial to pass that law applied to the mining interests of this country. Mines are a character of property which do not grow and enhance in value by the lapse of time, but, on the contrary, as they are worked out the property itself becomes valueless; whereas, with reference to the other kinds of property, namely, the agricultural property of the country, the lapse of time in many instances serves only to enhance its value by reason of the improvements which are made upon it. And so it was that a large syndicate of European capital took up millions and millions of acres of the public lands—agricultural lands—in the Territory of Dakota and in the State of Colorado, or the Territory of Colorado; and it is against the acquisition of that character of property, I think, that both legislation and constitutional provisions ought to be directed. I believe that it is in the acquisition and possession of small homes that the happiness and prosperity of this country depends, and if by any provision in this Constitution it is permissible for foreign capital to obtain large quantities of the agricultural lands of this country, I believe that the time will come when the people of the State of Montana and the people of the whole United States will rise up and protest. But as against the mineral interests of this country no such objection as that can be urged.

The Chair put the question upon the adoption of the substitute for Section 24, offered by the gentleman from Silver Bow (Mr. Dixon), and the same was declared carried.

The Clerk read Section 25, as follows:

"Sec. 25. That the people have the right peaceably to assemble for the common good, and to appeal to those invested with the powers of government for redress of grievances by petition or remonstrance."

There being no amendments to Section 25, the Clerk read Section 26, as follows:

"Sec. 26. That no person shall be deprived of life, liberty or property without due process of law."

There being no amendments to Section 26, the Clerk read Section 27, as follows:

"Sec. 27. That there shall never be in this state any involuntary servitude except as a punishment for crime, whereof the party shall have been duly convicted."

There being no amendments to Section 27, the Clerk read Section 28, as follows:

"Sec. 28. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise."

There being no amendments to Section 28, the Clerk read Section 29, as follows:

"Sec. 29. The enumeration in this Constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people."

Mr. Fields, of Park: Mr. Chairman, I move that Section No. 30, which I herewith submit, be incorporated in the Declaration of Rights of the people of the Territory of Montana.

The Chairman: The gentleman from Park offers the following, to be inserted as Section No. 30: "that no armed person or persons be brought into this State from other states to preserve the peace, except upon a call issued by the Governor of the state or the Commander in Chief of the United States Army."

The motion was seconded.

J. R. Toole, of Deer Lodge: I desire to ask if the law of the Constitution of the United States does not make that provision. It occurs to me, Mr. Chairman, that it does. I can conceive of no case whereby a military or other power would be called in this state, or in any other state, without an order of the Governor or the Commander in Chief of the Army.

Mr. Fields, of Park. Mr. Chairman, and gentlemen, I would like to say a few words in regard to this matter. We find that there was a bill introduced in Congress February 2nd, 1888, and a committee of five appointed to investigate troubles arising in different states by armed bodies being kept by corporations and companies for the preservation of the peace. That same committee reported to the Fiftieth Congress, Second Session, February 27th, 1889. Upon a thorough investigation of the case they found in the State of Pennsylvania one company, the Redding Railroad Company, employed three hundred policemen, and the coal and iron company employed four hundred and twelve, making a total of seven hundred and twelve men, all armed with revolvers and rifles, to keep the peace, and keep the working men and others in servitude. Now I claim, among the rights of the people of Montana, that we should preserve the peace in Montana first ourselves, and if we are unable to preserve that peace ourselves, that our governors shall apply and call for our militia, and, if that fails, that the United States army may be called upon. I do not believe, nor I shall not believe, that any corporation or person has got the right or power to employ armed bodies of men to shoot down people who assemble and congregate for the purposes of freedom, and I think that the time has come when the people, in our Bill of Rights, shall show that we are ready and able to protect ourselves without any such armed bodies being in our midst; and I shall uphold this measure, and I hope that every true, loyal, peace loving and liberty loving member of this Convention will vote for it.

Mr. Warren, of Silver Bow: Mr Chairman, "That the right of any person to take or bear arms in defense of his own home, person and property, or in aid of the civil power when thereto legally summoned, shall not be called in question" That is one of the sections in our Bill of Rights. I feel that, as a citizen of this Territory, that in defense of my own property, if I cannot defend it myself, that I shall have the right to invite outsiders to aid and assist me in defending it.

Mr. Courtney, of Silver Bow: Mr. Chairman, I think this declaration is in harmony with right, and it seems to me that a person, or the people of this Territory who are unable to defend their homes, by calling upon the military power through the Governor that they can get the necessary protection; and I am certainly opposed to the granting of the power which should by right belong to the Governor, and only to the Governor, to the head of any corporation, in the event of any trouble. I hope it will never be necessary to go to that extent, but in case it does, I think you will agree with me that the people of this Territory can always elect to office men upon whom the public can depend and men who shall exercise the duties of their office to the satisfaction of the people. Believing that, I crtainly shall vote for this resolution.

Mr. J. R. Toole, of Deer Lodge: Mr. Chairman, I labored under a misapprehension when the resolution was first read, but I am heartily in favor of it. I hope it will never come to a pass here when we are not competent and capable of managing affairs of this kind as citizens of our own state, and I must here say that we should endeavor to guard against the possibility of such contingencies as have occurred in the United States; bodies of men such as Pinkerton's men have gone into certain states and intimidated citizens of those states for pay. For this reason I shall support heartily the amendment as offered.

Mr. Breen, of Jefferson: Mr. Chairman, and gentlemen, as I understand the resolution that is offered, it is offered particularly against those vast and armed bodies of men known as the Pinkerton detectives, and this Convention is not the only Convention that is dealing with this question. The Convention sitting in Washington Territory had the same matter before it, only they had an illustration of it last winter when there were armed forces of Pinkerton detectives brought into their coal mines and intimidated miners because they had the manhood to stand up there and demand their rights. We see examples of it all over the country; we saw it in Montana in 1876, when the railroad brakemen went on a strike against lowering their wages; and that strike was not well under way when there was a special body of Pinkerton detectives came to Butte, three—I think four—in number came for a starter. I was informed of it at the time, for I was in Butte. And then again we saw another corporation in this Territory, which I shall not name, that brought Pinkerton detectives to their works, and they were employed there a year ago, when I quit their employment. These men did not come as soldiers, or as officers of the law interested in the welfare of the Territory, but they came at the bidding of some corporation, that, for a monetary consideration, wishes to crush the manhood of the people of the Territory to advance their own interests and to swell their own bank accounts. If we are going to have labor troubles here, which I hope we never will have, let us have our own officers, granting that we can depend upon them, and if necessary let them come and reason with us and talk to us, and, if necessary, arrest us; but we do not want any such class of men as makes up the standing armies in Chicago today to go to any part of the Union where they can be at the call of corporations. There are several states of the Union where they are depending upon their citizens for the preservation of the peace in times of peace, and for my part I shall vote for this proposition and support it to the best of my ability, and I hope every other member of the Constitutional Convention will do the same.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, I have not given much thought to this matter. It was sprung rather suddenly on the Convention; but I certainly should think that the ideas of every patriotic Montanan would be in line with the feelings expressed by the different speakers in favor of this proposition. The first duty of our own officers and of our own people is to enforce our own laws, and suppress all riots and all insurrections against them; and the Constitution of the United States, whenever the constituted authorities of Montana are unable, provides a way by which we can be reinforced by the whole people of the United States upon the call of our legislature and our Governor, directed to the President of the United States, for all the power of the Government to help suppress any riot or insurrection, and to maintain and enforce our laws. These are the legal and constitutional ways of enforcing the laws of all good government. Now I do not know anything about these matters that have been brought up, and I do not know that they should be cited as reasons, particularly the employment of detectives or anything of that kind, for the adoption of this resolution; but I do know, and every member of the Convention and every lawyer and every citizen knows, that for any one or anybody to bring an armed body of men into this Territory for any purpose whatever, either to foment trouble or to put it down, is an invasion of the Territory of Montana, and of its sacred rights and privileges. (Applause)

Mr. Hogan, of Silver Bow: Mr. Chairman, I certainly favor this amendment as offered, and I can see no reason why this Convention should object to it. I can see no objection in it to influence any patriotic citizen against it, nor can I see any reason why every patriotic citizen should not approve it. I think we can keep the peace here, and I think we can do it much easier and better than to have any class of armed men brought into this Territory. I think it is a good clause to insert in the Constitution, and I certainly will favor it. I think that every state in the Union, or at least the citizens of every state in the Union, should be able to keep and to preserve the peace among the citizens of that state. If not, let the United States army, or the proper officers import the troops into this or any other state to do it. I do not believe in bringing these armed bodies of men into any state of the Union, and therefore I shall support the proposition.

Mr. Sargent, of Silver Bow: Mr. Chairman, Article 3 of our Bill of Rights says, "All persons are born equally free to have certain natural, essential, and inalienable rights, among which may be reckoned the right of enjoying and defending their rights and liberties; that of acquiring, possessing and protecting property," etc. Now I claim that if any man has property within the limits of the Territory of Montana, and thinks that he cannot have it protected sufficiently, he has the right to go to the ends of the country and summon all the military and civil aid of the United States. I say that it would be an infringement on his rights that he should not go anywhere to seek that protection that he is entitled to have under the Constitution of the State, and I am certainly opposed to the resolution for this reason.

Mr Hogan, of Silver Bow: Mr. Chairman, I take exceptions to the remarks of my friend from Silver Bow I object to any person or corporation, or the representative of any person or corporation, going outside of the State for protection to the property of that corporation, and that is the object of the resolution, and I can see nothing wrong with it.

Mr. Ramsdell, of Missoula. Mr. Chairman, in the consideration of this matter it seems to me that we are actuated, each one, more by selfish motives than otherwise. We should endeavor, in the discussion of this question, to be actuated by calm, deliberate action. It is a recognized fact today that there is a great social struggle going on, and that this fight today is between the so-called capitalist and the laboring man. We may define them by different names; we may attempt to say that it is not so, but the fact still remains that in every daily paper that we pick up we see that this struggle is going on. I expect to vote against certain propositions that have been introduced by what are termed representatives of the labor element, but still I maintain that the resolution introduced by the gentleman from Park is just and honest and will be beneficial in its results. There have been provisions, and there are provisions that the military may be called on in any time of danger, or in times when property is threatened; I think that is sufficient, and the resolution, as introduced by the gentleman from Park, is to protect the honest laboring man and to destroy the power and the action of the Pinkerton detectives in standing over men—laboring men—and threatening and menacing them in the rights which certain statutes of this Territory accord them; and I believe that every man who has given this subject due consideration must admit that in order to preserve the rights of the laboring men we must provide in the Constitution ways and means whereby no force of any kind or character can be held over private individuals to intimidate or menace them in any way, by any class or body of men. I think that the Constitution of the United States and that the laws of our land are sufficiently clear and explicit in their character to adequately protect every man's property within the limits of Montana, and I do not see in this resolution any intimation that threatens in any way the property of any person or persons.

Mr. Knowles, of Silver Bow: I do not think the Governor of one state has the right to call on the governor of any other state for military assistance under any circumstances.

Mr. Maginnis, of Lewis & Clarke: The Constitution of the United States says that the President of the United States shall use the armies of the United States upon the call of the governor of any state, or the legislature thereof. I move, Mr. Chairman, that the Committee do now arise, report progress, and ask leave to sit again.

The motion was seconded

The Chair put the motion, and the same was declared carried.

IN CONVENTION.

The President in the Chair.

The Convention was called to order, and the Chair announced that the Convention would hear the report of the Committee of the Whole.

Mr. Callaway, of Madison: Mr. President, I have to report that the Committee of the Whole have had under consideration General File No. 1. Progress has been made, and the Committee asks leave to sit again.

Mr. Warren, of Silver Bow: I move that the report of the Chairman of the Committee of the Whole be adopted, and that the Committee be granted further time for the consideration of General File No. 1.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

Mr. Buford, of Madison, moved that the Convention do adjourn.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

Adjourned until Friday, July 19, 1889, at 10 A. M.

TWELFTH DAY.

Friday, July 19th, 1889.

The Convention was called to order by the President at 10 o'clock A. M.

The Clerk called the roll.

Mr. Eaton, of Park: Mr. President, Mr. Haskell was called away from town yesterday, and would like leave of absence until Monday afternoon.

The President: Mr. Myers, the gentleman from Yellowstone, desires leave of absence after today's session until Tuesday next, at 3 o'clock.

Mr. Mitchell desired leave of absence until Monday.

Mr. Gibson also desired leave of absence until Monday morning.

The Chair announced that these gentlemen would be excused.

The Chaplain offered prayer.

The Clerk read the Journal of the previous day.

The Chair announced that the Clerk had a communication on suffrage, which would be received and referred to the Committee on Suffrage without being read.

Mr. Myers, of Yellowstone, sent up the report of the Committee on State Institutions and Public Buildings, which the Clerk read, as follows:

"Mr. President, your Committee on State Institutions and Public Buildings desires to report the following, to be incorporated in the Constitution.

(Signed) ALFRED MYERS, Chairman."

Section 1. Educational, reformatory, and penal institutions, and those for the benefit of the insane, blind, deaf, and mute and such other institutions as the public good may require, shall be established and supported by the state in such manner as may be prescribed by Law.

Section 2. The Legislative Assembly shall have no power to change or locate the seat of government of the state, but shall at its third regular session, after the adoption of this Constitution, provide by law for submitting the question of the permanent location of the seat of government to the qualified electors of the state at the general election then next ensuing, and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said Legislative Assembly shall also provide that in case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the state at the next general election; Provided, That until the seat of government shall have been permanently located, as herein provided, the temporary location thereof shall be and remain at the city of ....

Sec. 3. When the seat of government shall have been located as herein provided, the location thereof shall not thereafter be changed, except a vote of two-thirds of all the qualified electors of the state voting on that question at a general election, at which the question of the location of the seat of government shall have been submitted by the Legislative Assembly.

Sec 4. The Legislative Assembly shall make no appropriations or expenditures for capitol buildings or grounds until the seat of government shall have been permanently located as herein provided.

Sec. 5. The several counties of the state shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity or other misfortune, may have claims upon the sympathy and aid of society.

The President: If there be no objections this report will be referred to the Committee on Printing, and ordered to be printed.

Mr. Brown, of Choteau, sent up report of Committee which was read by the Clerk as follows:

"Mr. President, your Committee to whom was referred Resolution No. 14, introduced by Mr. Conrad, relating to the creation of new counties, beg leave to report that they have had same under consideration, and respectfully return same without recommendations."

(Signed) DAVID G. BROWN, Chairman.

The President: This report, with the resolution referred, will take the general course and be placed on the general file.

Mr. J. K. Toole, of Lewis & Clarke, sent up the report of the Committee on Legislative Departments, which the Clerk read as follows:

"Mr. President, your Committee on Legislative Departments have had under consideration sundry propositions to be embodied in the Constitution of the State of Montana, and have directed me to report back the accompanying provisions, with the recommendation that the same be adopted as the Article on Legislative Departments."

(Signed) J. K. TOOLE, Chairman.

Mr. J. K Toole, of Lewis & Clarke Mr. President, the articles embodied in the report are numerous, and are to be printed, and I ask the unanimous consent that the reading of it be dispensed with, and that it be referred to the Committee on Printing.

The President: If there be no objection to the request of the gentleman, that the reading of the articles be dispensed with, it will so be dispensed with and be ordered printed.

The report of the Committee was as follows:

PROPOSITION NO 19.

Article on Legislative Departments.

Section 1. The legislative power shall be vested in a Senate and House of Representatives, which shall be designated "The Legislative Assembly of the State of Montana."

Sec. 2. Senators shall be elected for the term of four years, and Representatives for the term of two years, except as is otherwise provided in this Constitution.

Sec. 3. No person shall be a Representative who shall not have attained the age of twenty-one years, or a Senator who shall not have attained the age of twenty-five years, and who shall not be a citizen of the United States, and who shall not (for at least twelve months next preceding his election) have resided within the county or district in which he shall be elected.

Sec. 4. The Legislative Assembly of this State, until otherwise provided by law, shall consist of sixteen members of the Senate, and fifty members of the House of Representatives. It shall be the duty of the first Legislative Assembly to divide the State into Senatorial and Representative districts, but there shall be no more than one Senator from each county. The Senatorial districts shall be numbered from one consecutively to correspond with the number of counties. The Senators shall be divided into two classes. Those elected from districts numbered odd numbers shall constitute one class, and those elected from districts numbered the even numbers shall constitute the other class; and when any additional Senator shall be provided for by law his class shall be determined by lot One-half of the Senators elected to the first Legislative Assembly shall hold office for one year, and the other half for three years, and it shall be determined by lot immediately after the organization of the Senate, whether the Senators from the odd or even numbered districts shall hold office for one or three years.

Sec. 5 Each member of the first Legislative Assembly, as a compensation for his services, shall receive six dollars for each day's attendance, and twenty cents for each mile necessarily traveled in going to and returning from the seat of government to his residence by the usually traveled route, and shall receive no other compensation, perquisite or allowance whatsoever. No session of the Legislative Assembly after the first, which may be ninety days, shall exceed sixty days. After the first session the compensation of the members of the Legislative

Assembly shall be as provided by law: Provided, That no Legislative Assembly shall fix its own compensation.

Sec. 6. The Legislative Assembly (except the first) shall meet at the seat of government at twelve o'clock noon, on the second Tuesday after the first Monday of January, next succeeding the general election provided by law, and at twelve o'clock noon, on the second Tuesday after the first Monday of January of each alternate year thereafter, and at other times when convened by the Governor. The term of service of the members thereof shall begin the next day after their election, until otherwise provided by law; Provided, That the first Legislative Assembly shall meet upon the proclamation of the Governor, after the admission of the State into the Union, upon a day to be named in said proclamation, and which shall not be more than fifteen or less than ten days after the admission of the State into the Union.

Sec. 7. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office under the State; and no member of Congress, or other person holding an office (except attorney at law, notary public, or in the militia) under the United States or this State, shall be a member of either house during his continuance in office.

Sec. 8. No member of either house shall, during the term, for which he shall have been elected, receive any increase of salary or mileage under any law passed during such term.

Sec. 9. The Senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members President pro tempore. The house of Representatives shall elect one of its members as Speaker. Each house shall choose its other officers, and shall judge of the elections, returns and qualifications of its members.

Sec. 10. A majority of each house shall constitute a quorum, to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each house may prescribe.

Sec. 11. Each house shall have power to determine the rules of its proceedings, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribe or private solicitation, and with the concurrence of two-thirds, to expel a member, and shall have all other powers necessary for the Legislative Assembly of a free state. A member expelled for corruption, shall not thereafter be eligible to either house of the Legislative Assembly and punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

Sec. 12. Each house shall keep a journal of its proceedings and may, in its discretion, from time to time, publish the same, except such parts as require secrecy, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal.

Sec. 13. The session of each house and of the committees of the whole shall be open, unless the business is such as requires secrecy.

Sec. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sec. 15. The members of the Legislative Assembly shall, in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

Sec. 16. The House of Representatives shall have the sole power of impeachment. The concurrence of a majority of all the members shall be necessary to an impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose the Senators shall be upon oath or affirmation to do justice according to law and evidence. When the Governor or Lieutenant Governor is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without a concurrence of two-thirds of the Senators elected.

Sec. 17. The Governor and other State and Judicial officers, except county judges and justices of the peace, shall be liable to impeachment for high crimes and misdemeanors, or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust or profit in the State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial judgment, and punishment according to law.

Sec. 18. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

Sec. 19. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

Sec. 20. The enacting clause of every law shall be as follows: "Be it enacted by the Legislative Assembly of the State of Montana."

Sec. 21. No bill for the appropriation of money, except for the expenses of the government shall be introduced within ten days of the close of the session, except by unanimous consent of the house in which it is sought to be introduced.

Sec. 23. No bill, except general appropriation bills, shall be passed containing more than one subject which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

Sec. 24 No bill shall become a law, except by a vote of a majority of all the members present in each house nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal.

Sec. 25. No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended, or extended, shall be re-enacted and published at length.

Sec 26. The Legislative Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces, laying out, opening, altering or working roads or highways, vacating roads, town plats, streets, alleys or public grounds, locating or changing county seats, regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates, or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions; or giving effect to informal or invalid deeds; summoning or impaneling grand or petit jurors, providing for the management of common schools, regulating the rate of interest on money; the opening or conducting of any election, or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; remitting fines, penalties, or forfeitures; creating, increasing, or decreasing fees, percentages, or allowances of public officers; changing the law of descent, granting to any corporation, association, or individual, the right to lay down railroad tracks, or any special or exclusive privilege, immunity, or franchise whatever; for the punishment of crimes; changing the names of persons or places, for the assessment or collection of taxes; affecting estates of deceased persons, minors, or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury; relinquishing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein; legalizing, except as against the State, the unauthorized or invalid act of any officer; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension, or impairing of liens. creating offices, or prescribing the powers and duties of officers in counties, cities, townships, election or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable, no special law shall be enacted.

Sec. 27. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the Legislative Assembly immediately after their titles have been publicly read; and the fact of signing shall be at once entered upon the journal.

Sec. 28. The Legislative Assembly shall prescribe by law the number, duties and compensation of the officers and employees of each house; and no payment shall be made from the State Treasury, or be in any way authorized to any such person, except to an acting officer or employe elected or appointed in pursuance of law.

Sec. 29. No bill shall be passed giving any extra compensation to any public officer, servant, or employe, agent, or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim made against the state without previous authority of law, except as may be otherwise provided herein.

Sec. 30. All stationery, printing, paper, fuel, and lights, used in the legislative and other departments of government, shall be furnished, and the printing and binding, and distribution of the laws, journals and department reports and other printing and binding, and the repairing and furnishing the halls and rooms used for the meetings of the Legislative Assembly, and its committees, shall be performed under contract, to be given to the lowest bidder, below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract: and all such contracts shall be subject to the approval of the Governor and State Treasurer.

Sec. 31. Except as otherwise provided in this Constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment; Provided, That this shall not be construed to forbid the Legislative Assembly from fixing the salaries or emoluments of those officers first elected or appointed under this Constitution, where such salaries or emoluments are not fixed by this Constitution.

Sec. 32. All bills for raising revenues shall originate in the House of Representatives; but the Senate may propose amendments, as in the case of other bills.

Sec. 33. The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the State, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

Sec. 34. No money shall be paid out of the treasury, except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof.

Sec. 35. No appropriation shall be made for charitable, industrial, educational, or benevolent purposes to any person, corporation or community not under the absolute control of the State, nor to any denominational or sectarian institution or association.

Sec. 36. The Legislative Assembly shall not delegate to any special commission, private corporation, or association any power to make, supervise, or interfere with any municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes, or to perform any municipal function whatever.

Sec. 37. No act of the Legislative Assembly shall authorize the investment of trust funds by executors, administrators, guardians, or trustees in the bonds or stock of any private corporation.

Sec. 38. The Legislative Assembly shall have no power to pass any law authorizing the State, or any county in this State, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same.

Sec. 39. No obligation or liability of any person, association or corporation, held or owned by the State, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the Legislative Assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.

Sec. 40. Every order, resolution or vote, in which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of the business of the two houses, shall be presented to the Governor, and before it shall take effect be approved by him or, being disapproved, be re-passed by two-thirds of both houses, as prescribed in the case of a bill.

Sec. 41. If any person elected to either house of the Legislative Assembly shall offer or promise to give his vote or influence in favor of or against any measure or proposition, pending or proposed to be introduced into the Legislative Assembly, in consideration or upon condition that any other person elected to the same Legislative Assembly will give, or will promise or assent to give, his vote or influence in favor or against any other measure or proposition, pending or proposed to be introduced into such Legislative Assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the Legislative Assembly shall give his vote or influence for or against any measure or proposition, pending or proposed to be introduced into such Legislative Assembly, or offer, promise or assent so to do, upon condition that any other member will give, or will promise or assent to give his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced in such Legislative Assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such Legislative Assembly, he shall be guilty of bribery, and any member of the Legislative Assembly, or person elected thereto, who shall be guilty of either of such offenses, shall be expelled, and shall not thereafter be eligible to the Legislative Assembly, and, on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

Sec. 42. Any person who shall directly or indirectly offer, give or promise, any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer, or member of the Legislative Assembly, to influence him in the performance of any of his official or public duties, shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law.

Sec. 43. The offense of corrupt solicitation of members of the Legislative Assembly, or of public officers of the State, or of any municipal division thereof and the occupation or practice of solicitation of such members or officers, to influence their official action, shall be defined by law, and shall be punishable by fine and imprisonment.

Sec. 44. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislative Assembly shall disclose the fact to the house of which he is a member, and shall not vote thereon.

Mr. Parberry, of Meagher, sent up the report of the Committee on Irrigation, which the Clerk read as follows:

"Mr President: Your Committee on Irrigation, to whom was referred Proposition No 8, offered by A. J. Burns, of Lewis & Clarke, hereby beg leave to report that they have duly considered said Proposition, and recommend that same be not adopted as a part of the Constitution.

(Signed) PARBERRY, Chairman.

The President: If there be no objection, this report, with the accompanying Proposition, will be placed on the General File.

The Clerk also read the following report, which was sent up:

"Your Committee on Irrigation, to whom was referred the Resolution of Maginnis relating to the grant of arid lands by the United States to the State of Montana, beg leave to report favorably on the same, and recommend the Convention to memoralize Congress accordingly

(Signed) PARBERRY, Chairman."

The President: The Chairman understood that this was referred to the Committee on Irrigation for the purpose of drafting this memorial.

Mr. Parberry, of Meagher: The Committee were undecided whether they should memoralize Congress or not before proceeding further.

Mr. Kennedy, of Missoula: I move that the subject matter of that report be recommended to the Committee on Irrigation, with instructions to draft the memorial.

The motion was seconded.

The Chair stated the motion, and the same was declared carried.

Mr. Conrad sent up a report of the Printing Committee which the Clerk read as follows:

"Mr. President: Your Committee on Printing, to whom was referred Resolution No. 8, and Propositions Nos. 10, 11, 13, 14, and 15, beg leave to report that they have compared the copies with the original, and find them correctly printed, except a few immaterial typographical errors, which have been corrected with a pen.

(Signed) C. E. CONRAD, Chairman."

Mr. Burleigh, of Custer: Mr. President, I desire to offer the following Resolution.

The President: The Resolution offered by the gentleman from Custer will be read by the Clerk.

The Clerk read as follows:

"Whereas, since the organization of the Territory of Montana the counties thereof have borne the expenses of the administration of justice and of government, and from their resources have provided for the same, and aided in the development and progress of the Territory; and

Whereas, they have necessarily incurred large indebtedness, which is now burdensome, and will become more so with the additional taxes necessary to be collected for the support of the State government;

Resolved, that it is the sense of this Convention that the State assume all county indebtedness as it existed on the 1st day of July, 1889, less the value of the public improvements in each county, such value to be ascertained by the actual cost of such improvements as shown by the records and accounts of the said counties; and that the Committee on Public Debt and Finance be instructed to report the necessary constitutional provision to carry out this Resolution."

The President: If there be no objection this Resolution will be received and referred to Committee No. 7.

Mr. Collins, of Cascade: Is it the understanding, Mr. President, under the reading of that Resolution, that that Committee is compelled to introduce an Article embodying the sense of that Resolution, to be incorporated in the Constitution?

The President: The Resolution is referred to the Committee simply for the purposes of consideration and report

Mr. Warren, of Silver Bow: Mr. President, it strikes me that it is hardly necessary to refer a Resolution of that character to any committee, and I make a motion that this Resolution be indefinitely postponed.

The motion was seconded.

Mr. Burleigh called for the ayes and noes.

Mr. Chessman, of Lewis & Clarke, asked that the Resolution be read, and the same was read.

Mr. Kennedy, of Missoula: I arise to a point of order. This proposition must be submitted to a proper Committee without debate. It is a matter that is intended to be incorporated in the Constitution, and under Rule 22 it must be referred to an appropriate committee.

The President: The question hinges upon the fact as to whether this is a proposition or a resolution; the Chair is of the opinion that it is a resolution, proposing matter to be incorporated in the Constitution, and the Chair is therefore of the opinion that the point of order taken by the gentleman from Missoula is well taken, and that this resolution ought to go to the Committee for consideration.

Mr. Mayger, of Lewis & Clarke: As I understand the Resolution, does it not require the Committee to report such a Resolution, or is it left to the discretion of the Committee?

The President: This matter is referred to the Committee to consider and report back to the Convention. It implies an instruction, but until it is moved and adopted by this Convention that instruction has no force. It is the opinion of the Chair that this matter should be referred to the Committee, without debate, for consideration and report.

The Clerk then read the following, offered by Mr. Luce of Gallatin.

IRRIGATION.

"Resolved that the following four sections be, under appropriate numbers, made a part of the Constitution in the Article under the head of Irrigation.

Sec........ The water of every natural stream not heretofore appropriated within the State of Montana is hereby declared to be the properly of the public; and the same is dedicated to the use of the people of the State, subject to appropriation as hereinafter provided.

Sec......... The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water.

Sec......... All persons and corporations shall have the right of way across any lands in the State for the construction of ditches, canals and flumes for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes, and for drainage, upon payment of just compensation.

Sec........ The General Assembly shall provide by law that the Board of County Commissioners in their respective counties shall have the power, when application is made to them by either party interested, to establish reasonable maximum rates to be charged for the use of water, whether furnished by individuals or corporations.

The President: This will be received and referred to Committee No. 24, if there be no objection.

Mr. Joy, of Park: I move that the Convention do now resolve itself into a Committee of the Whole and continue the business that we were engaged in yesterday in Committee of the Whole.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

The President called Mr. Callaway, the gentleman from Madison, to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Callaway, of Madison, in the Chair.

The Committee was called to order.

The Chairman: When the Committee arose yesterday it had under consideration the proposition of the gentleman from Park; what is the pleasure of the Convention?

Mr. Chessman, of Lewis & Clarke: Will the Chair please state the proposition. Mr Fields of Park sent up a substitute.

The Chairman: The gentleman from Park desires to withdraw the proposition offered yesterday, and to substitute the following:

"Sec. 30. That no armed person or persons be brought into this State from other states on the pretense of preserving the peace, except upon a call made by the Legislature of this State, or, of the Governor when the Legislature is not in session, but this shall have no application to the forces of the United States.

The motion was seconded.

Mr J. K. Toole, of Lewis & Clarke, sent up an amendment.

The Chairman: The gentleman from Lewis & Clarke offers the following: "No armed person or persons shall be brought into this State from any other State to preserve the peace, except upon the application of the Legislature, or of the Executive when the Legislature cannot be convened."

The motion was seconded.

Mr J K. Toole, of Lewis & Clarke: Mr. Chairman, I desire to say in explanation of that, that I have sought to employ, as near as possible, the language used in the Article of the Federal Constitution so far as the power is concerned—that it shall be upon the application of the Legislature of the State or of the Governor when the Legislature cannot be convened.

Mr. Collins, of Cascade, called for the reading of the resolution of the gentleman from Park, again.

The Proposition was read.

Mr Luce ,of Gallatin: Mr. Chairman, if I am in order, I would like to offer a substitute for the whole matter.

The Chairman: The gentleman from Gallatin offers the following as a substitute for the entire.

"No armed person or persons or armed body of men shall be brought into this State for the preservation of the peace or the suppression of domestic violence except upon the application of the Legislative Assembly or of the Governor when the Legislative Assembly cannot be convened."

The motion was seconded.

Mr. Maginnis called for the reading of the Resolution offered by Mr. Fields of Park, which was read.

Mr. Luce, of Gallatin: Mr. Chairman, in relation to the substitute which I have just offered, I simply rise to call the attention of the Convention to Section 4, Article 4, of the Constitution of the United States: "The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature or Executive (when the Legislature cannot be convened) against domestic violence." I think that the proposition I have offered there is in exact accordance with the Constitution of the United States. That troops may be brought here, or forces of United States troops may be brought here, for the protection of this State either against insurrection or against domestic violence, which may include, of course, the keeping of the peace, and I am free to say that I agree with the intention of the design and principle involved in the proposition of the gentleman from Park County, and I think that this embraces about the same idea with a correct conformity with the provision of the Constitution of the United States. I put it upon the broad ground that the State of Montana is capable of taking care of itself if we are not so capable, why we are not then capable of statehood. I believe that the people of Montana can protect themselves so far as necessary, and keep the peace of Montana, without the aid or interference of unauthorized armed men or armed bodies of men.

Mr. Fields, of Park: Mr. Chairman, I believe that the substitute offered by the gentleman from Gallatin is in strict conformity with Section 4, of Article 4, of the Constitution of the United States, and I also believe that it is in strict conformity with the resolution that I presented. So, also, is the other amendment. The point which I wished to cover was to avoid to the utmost any lengthy article or resolution, and in presenting the resolution which I did I was strictly cognizant of the effect of the existence of Section 4 of Article 4 of our federal Constitution. In the section which I have presented I refer to the Legislature, and instead of using the word "Executive" I used the word "Governor," meaning one and the same thing. Now I believe that it is necessary for the people of Montana to put themselves upon the basis of self protection. I wish to see it adopted and brought forward, giving the people a right to first take care of themselves, and if they are not able to do so, that they shall then have the right to call on others to help them. It is a known fact that when any disturbance of the peace, such as we have had in Pennsylvania and other Eastern states in the past, that armed bodies of men have been imported into those localities for the purpose of intimidating and coercing honest laboring men; and the Congress of the United States has taken these things into consideration, and did appoint a Committee of five to investigate these troubles, and they reported, and showed in their report that in one valley alone, in Pennsylvania there were seven hundred and twelve armed men under corporations there to preserve the peace, and that the report, when given, showed that the workingmen of those districts in which these disturbances occurred were in a state which I would term chattle slavery. I am willing that any substitute that may be offered here which will cover what was contemplated in my resolution shall be adopted, and I am willing to vote for it. I do not wish the honor or glory, if there be any in it, of presenting the resolution at all. I want to see it carried either one way or the other, so that in future those questions of people whose rights have been denied to them may look forward to our legislatures for protection. I am here not for the protection of the workingmen alone, I believe in equal protection all around. I am not here in the interests of any political party. I am here for a government that will give us equality and justice from one end of the page to the other, and from one class of citizens to the other, and I hope that this section will be adopted, and that the fact will be taken into consideration that it is not introduced for the purpose of giving any one man or class of men any more rights than any other.

Mr. J. K. Toole, of Lewis & Clarke: Mr. Chairman, I ask leave to withdraw the amendment which I presented. I think the amendment offered by the gentleman from Gallatin (Mr. Luce) expresses in better terms than my own the purposes of the resolution, and I therefore wish to withdraw it.

Mr. Clark, of Silver Bow: Mr. Chairman, I believe that the substitute offered by the gentleman from Gallatin covers the ground, and is acceptable to the mover of this resolution, hence I shall support its adoption. I have the fullest confidence and the greatest faith in the ability of the people of Montana to govern themselves without the intervention of armed forces brought in here, whether by corporations or individuals. I do not believe in importing into this Territory Pinkertons or any other class of men who make their living by a system of espionage upon the acts and conduct of the workingmen of this State. We have the necessary machinery of government, or will have when this State is thoroughly organized, to protect all the property and all the rights of the people. For that reason I give my hearty support to the Resolution offered by the gentleman from Park, and the substitute offered by the gentleman from Gallatin.

Mr. Rickards, of Silver Bow: If my memory serves me correctly, one of the very first things that this Convention did was to adopt the Constitution of the United States as a basis for all work that we were to undertake. Now, if it is necessary for us to take up one section or part of this Constitution and engraft it in our State Constitution, where may it stop? I want to say to you, and to this body, that I feel that we will be transcending our duties as a Constitutional Convention to adopt this measure, or anything like unto it. That I may not be misunderstood, if I were a member of a state legislature and a matter of this kind was introduced, I should most heartily support it; but I say again that, as a Constitutional Convention, it seems to me we are transcending our duties to attempt any such legislation as this. Now, if there are reasons for adopting this measure, the same arguments can be adduced for the adoption of other like measures, and if we are to undertake them, where are we to stop? I want to say simply that I am opposed to any legislative enactments in this Constitutional Convention, and therefore I shall vote against this proposition as offered by Mr. Fields, or by Mr. Luce, or any other that may be offered as a substitute for the original.

Mr .Craven, of Lewis & Clarke: Mr. Chairman, I think that we should have something of the kind in the Constitution. The establishment of a state government, with the full equipment of officers incident thereto, presupposes not only a power but an obligation on the part of the State to preserve peace and order among its own citizens, and in this connection I am prone to abide with my own people. With the safeguards thrown around each citizen by the Constitution of the United States, I am willing to entrust my life and liberty and property in the hands of the citizens of this state. Once establish the principle that any company or corporation has the unqualified right to bring in ten Pinkerton detectives on the ground real or fancied, that they are necessary for the preservation of the peace, and you establish the principle, and you give them the right to bring in one hundred men. With the right to bring in one hundred men you give them equally the right to bring in one thousand men—a standing army resting on their arms around the peaceable forces of the industries of this State—the number of the men, the character of the soldiery and the duration of their presence to be determined only by the wish and the wealth of their employer; and this, Mr. Chairman, in an age when feudalism is supposed to exist only in the dusky past—this condition, Sir, when we have entered into a social compact, entrusting to the executive and judicial departments the preservation of our lives, our liberty and our property. What are constables and sheriffs for if they are powerless to preserve the peace? They may call any citizen to their assistance; if they are powerless they can appeal to the Governor, and he can call out the militia. What purpose have we in the establishment of a state militia? Is it merely for the purpose of wearing out military cloth and brass buttons—exploding surplus powder, in showing their bravery only in quelling these horrible Indian massacres, of which we saw an instance in Missoula county a few days ago? (Laughter) When the constables and sheriffs are powerless, and the people of the Territory and the Governor and the militia, the entire military force of the United States stands ready at our invitation to preserve peace and order. Hence it is that this resolution can do no harm, and it will eventually prevent a great deal of possible harm, and should have a place in the Constitution. I stand ready to lend my vote in favor of its adoption. (Applause).

Mr. Joy, of Park: Mr Chairman, I am unable to add anything to what the gentleman has already said, unless it be to say that I have seen something of the affairs that the gentleman from Park county alludes to, and which prompted him no doubt to present this Resolution; and I am heartily in favor of the Resolution as suggested by the gentleman from Park. I think that in this day and age and generation, when we are all taught to believe and work upon the principle of equality one with another, that it is improper that, while an honest man is laboring in the mines, or in any other employment, any other citizen should stand over him with a shot gun in order to intimidate him in any manner. I think it is perfectly safe to adopt the Resolution as suggested, and I am heartily in favor of it.

Mr. Luce, of Gallatin: In reply to the suggestion of the gentleman from Silver Bow (Mr. Rickards), that the Constitution of the United States affords the protection alluded to, I wish to say that I agree with him, but those old constitution makers never had the faintest idea that the time would arise when private individuals or private corporations would take into their own hands the military forces in order to preserve the peace or protect their own property. Now their property has the same right to protection that mine has, and it certainly would not be right on my part to establish an arsenal in my own house and employ private soldiers to protect my own property, but rather that I should go to that great source of protection that every citizen goes to—government. I say that it was never contemplated that any such state of affairs should ever exist in any state. Again, it has always been the policy of the law to suppress anything that tends to a breach of the peace. Now I say that when unauthorized armed men stand about and around those who are in the employ of any corporation or any private individual, it is a menace to those men employed by these corporations or individuals, and it tends to a breach of the peace; and if you permit it upon the one side you must permit it upon the other; then you have two standing armies that are not recognized by any law upon God's earth ready to fight at the drop of the hat; you have bloodshed in engagements that nobody can sanction. I say that anything that tends to a breach of the peace should be discouraged in this new State of Montana, and I do undertake to say that, so far as I know the citizens of this Territory, they are a loyal, law abiding people, not only in keeping the peace but in preventing breaches of it—patriotic not only in preserving the rights of every citizen but also in seeing that no man shall do that which shall tend to a breach of the peace. And then again, I say that for all purposes in this Territory, so far as I understand it, the organization of this new State will be sufficient in power—the executive power—to keep the peace, and suppress domestic violence; but if we ever do degenerate to the extent that we cannot rely upon our executive arms, then we have this protection that is guaranteed to us in the fourth Article of the Constitution we may then call upon the Executive, or the Commander in Chief of the forces of the United States, to-wit: The President of the United States,—to send troops in here to suppress our own domestic, internecine violence, I insist that it has grown up within certain states of this Union, and it may apply sometime to this State, that men think they are above the law and better able to protect their own property than the executive of the state in which they live, and therefore they call to them unauthorized bodies of armed men—I do not care for what purpose, it is wrong anyway and anywhere, and for that reason I am strongly in favor of this proposition, and I only offer this substitute in order to bring it completely, as I think, within the provision of the Constitution of the United States.

Mr. Courtney, of Silver Bow: Mr. President, I wish to have one word to say upon this question. I am very pleased and proud to vote for a proposition of this kind, for the reason that I think it is an act of simple justice. I have lived long enough in Montana to know that the people of this Territory are amply able to take care of themselves; but even though it should come to such an emergency that we would not be able to do so, we have a course open to us, and that course is entire and complete compliance with the law. However, I have this suggestion to urge, and that is that these two resolutions seem to be about the same in substance. Now, in order that there may be no misunderstanding I would like to see either one or the other withdrawn. I would certainly be pleased to vote for either one. As it is, I will vote for the substitute.

Mr Sargent, of Silver Bow: Mr. Chairman, there seems to be a great unanimity of opinion upon this question; but I apprehend there are two sides to the question. My idea is that the privileges of the citizen are that, in case of danger to himself, he may call upon the citizens to surrender even life itself, if necessary, for his protection, and also, that when the life or property of a citizen is in danger, the duty of the government towards that citizen ends only when his life or property is placed in danger. Now in Article 14 of the Amendments to the Constitution it says, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Now I say that it is an abridgment of my rights and privileges, guaranteed to me by the Constitution, if I cannot at my discretion, within the law, call upon the sixty millions of people within the United States, if necessary, to preserve my life and property; and if this Constitutional Convention, or the Legislature of Montana, passes any law forbidding it, in my judgment it is clearly unconstitutional, and will be void and of no effect. If the State of Montana can abridge the rights and privileges of the citizens as guaranteed by the Constitution conversely they can abridge the rights of the Government; and if the individual is protected behind imaginary state lines, they can say that the Government shall not call upon them, or define and restrict the manner in which they can do it whenever the country is in danger. I say it is a bad principle, and legislation pure and simple, and it is also officious and ought not to be incorporated in our Constitution. Mr. Craven, of Lewis & Clark, called for the reading of the original proposition and the substitute therefor.

The same was read.

Mr. Craven: I rise to make this suggestion. The original resolution has a limitation clause saying that these men shall not be brought in from other states; the substitute says they shall not be brought here, whether from other states, or from Canada, or from across the Ocean.

Mr. Rickards, of Silver Bow: Mr. Chairman, I just want to say a word. I cannot hear all that is said in favor of or against this section, but I have heard enough to lead me to believe that perhaps I have been misunderstood. I want to again assert myself. I say that I am opposed to the adoption of this Section, or substitute, simply because I do not believe it is our province, as a Constitutional Convention, to do it. Now, as a resident of Silver Bow county, I have seen some of the evils aimed at in this Resolution, and I want to say, in order that I may not be misunderstood, that I believe it is wrong, radically wrong, to bring in any armed body of men as we have seen it done in Montana; and I say again, if I were a member of the State Legislature, I would champion such a cause as Mr. Field's champions, but there have been other resolutions or propositions offered here upon which the same arguments in favor of their adoption can be advanced, and now, thus early in the proceedings of this Constitutional Convention, it does seem to me we had better establish a precedent we can safely follow; and if we adopt this measure, as I said before, where shall we stop? For this reason, and only this reason, I shall vote against the adoption of the Section.

Mr. Robinson, of Deer Lodge, here arose to address the Convention. upon which there were several calls for the question.

Mr. Robinson, of Deer Lodge: I do not presume, Mr. Chairman, that the members of this Convention are aware of the fact I have listened patiently to what they have had to say upon this proposition in violation of the rules of this Convention and this Committee, that provides that until all the other members of the House or Committee shall have spoken, no member shall be entitled to speak more than once. I have listened to more than one speech, waiving my time in favor of gentlemen who have made two, and possibly more, arguments upon this proposition, and I presume such gentlemen would not now, after having infringed upon the rules, in any way desire to prevent me from expressing what I may think about the proposition. I know that I have not a very pleasing way of addressing any body of men; I know, Mr. Chairman, that I have not the faculty of at all times being on the popular side of a proposition. If I am noted for anything, Sir, I believe it is a reputation I sometimes enjoy for having the unpopular side of public propositions. I remember, Sir, years ago, in the Legislative Assembly of this Territory, when I happened to have the unpopular side of some propositions, that I was hooted and scoffed and abused by the members and everybody else, because I had the unpopular side of a proposition that saved Montana Territory from bankruptcy; and the public are indebted sometimes to men who have the faculty of taking the unpopular side of a proposition and paying no attention to what other men may think about it; but whether it is popular or unpopular to act upon their own judgment in the line of what they think is just and right—that class of men who stand sometimes as the rock bound shores of the ocean, and say to their opponents, thus far shall you go and no farther. These men, Sir, are even indebted to that class of men who are unpopular for their own protection. If we are swept by popular notions in this Convention, and run riot to pander to this thing, that and the other, then, Sir, I say we are in danger. But sometimes is it not well to listen to the reasons and ideas advanced by men who are unpopular, or that the Convention may not want to hear? I do not desire, Sir, to intrude myself upon this Committee and speak except where I believe it is my duty as a member of the Committee, and Convention, and a duty I owe to the men who sent me here to represent them in this Convention and Committee. Thus, in answer to the clamors of those who protest against anything I might say upon the proposition, I will proceed now to express my convictions upon this question. That I may intelligently understand it, for the purpose of making an inquiry, Mr. Chairman, I would ask that this amendment we are voting on be now read, because there are some very striking features in it that I may possibly be able to point out to this Committee.

The amendment was read.

Now, Sir, this amendment leaves the matter, in my opinion in some obscurity. We have some provisions of the Constitution of the United States, and some settled principles of law in regard to the matters contemplated in this that we cannot set aside or bid defiance to. It seems to me, among other things, that we have a provision of the Constitution of the United States—of the amendments to the Constitution, Article 2, which says, "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." Now then, Sir, this amendment proposes a thing that seems to be somewhat ambiguous. It is very far reaching in its scope, that is, it prohibits any person bringing armed men into the Territory for the purpose or under the pretext of preserving the peace Now, Sir, if that is the literal meaning of this Section, it is certainly in violation of this provision of the Constitution of the United States of men living upon the borders of this Territory find their property is in danger—are jeopardized by armed mobs of Indians or other lawless men, which are frequent on the borders of this Territory and over in Idaho or Utah or Dakota or Wyoming—they find armed men that are available there for their protection and for the protection of their property, and they are living in the remote parts of Montana Territory, when the Legislature cannot be convened in time to afford them any protection, then—then, Sir, if this amendment contemplates a prohibition against a man's stepping across the line and bringing his neighbors, and men that may be convenient there, across to aid him, to prevent the Indians from burning his farm houses down, or to prevent raids or injury to his person or property—prevent him or them from bearing arms, but the right of the Constitution that is guaranteed to them—then, if this is meant to prohibit that, and it seems to me it smacks very strongly of it, then I say it is in violation of the Constitution of the United States, and it is wrong in principle if it is meant to strike at a proposition of that character; if it is meant to strike at these men who live upon the borders of Montana, and they are prohibited from getting those who live outside of the confines of the State to step across the line and assist them, whether it be one man or two or twenty-five or fifty or one hundred men—if it is meant to prevent that, I say it is in violation of the Constitution of the United States, and it is against justice to those who occupy the border possession of Montana. I say, upon that proposition, it is wrong. If it is meant, Mr. Chairman, to prevent them coming as armies to assist as police force, then I say it is utterly useless, for this reason: In the first place, it is well understood by any man who understands the institutions of our country how, these things all originated under the Constitution and organic law of the United States; that is to say whenever process is put into the hands of any executive officer issued from any court, or whenever that officer is acting in his official capacity, and there is resistance to the service of that process, then the law points out the course, and the only course, to pursue—that is, that officer calls upon the people of the community as a posse to assist him in executing that process from the courts; he has a right to call on anybody as a posse to assist him in the execution of that process; then if he is unable to execute that process in that way he calls upon the Governor of the State for assistance; then, if from any cause the Governor of the State is unable to secure sufficient force there to assist in executing that process, or if the Legislature is not in session, the Governor then calls upon the President of the United States and the Secretary of War for assistance. These are the only ways, Sir, provided by law, that forces can come from the outside, that even the militia of the State can be organized for the protection of property and to enforce the process of the courts. These are the only known ways under our laws and under the Constitution of the United States, and the only way it can be done; and I say that this amendment to this proposition would be useless in that view of it, and would present an absurdity. If, as I suggested before, it was intended to prevent the other purposes that I mentioned, then I say it is wrong in its principle and should not be enacted. I heard an expression from the lips of the gentleman from Park County—whether there was any covert meaning in the suggestion, or whether the gentlemen have any other hidden meaning beyond what appears upon the face of this resolution, I know not, neither do I care. His suggestion was that the working men of Montana should be protected. Now it is a query in my mind what relation the workingmen of Montana have to this proposition in the Constitutional Convention any more than those men who do not work. They are all entitled to equal protection. Even if a man is a bummer he is entitled to the protection of the laws The merchant, the business man and the professional man are all entitled to the protection of the laws, and to the right peaceably to bear arms, but what harm can there be, sir. in any man bearing arms in Montana Territory, even if they step over from the borders of Idaho into the limits of Montana at the suggestion of their neighbors, or otherwise, to assist in protecting them on the frontiers —what harm there can be in that, to go there in a peaceable way for the purpose of protection alone, I am certainly at a loss to know. There is a marked distinction, Mr. Chairman, between men assembling for unlawful and riotous purposes, and those coming together in a peaceable way. I have yet to learn that there is any violation of law for a man to bear arms in a peaceable way for the protection of his own life or his own property or that of his neighbor, whether it be within his state or that of another; whether he comes within the confines of our State voluntarily or whether he comes at the expense of his neighbor or friend, he comes there for a lawful purpose, Sir, and on the borders of Montana—that is, sparsely settled places—it seems to me it often becomes absolutely necessary that he should invoke the armed assistance and aid of his neighbors beyond the limit of the State of Montana, and not wait until the destruction of his property to apply to the Legislature for permission for him to step over outside of the borders of the State and invoke the aid and assistance of his neighbors. Then I say that I have yet to learn that such a thing ought to be a crime. It would be in violation of every principle of criminal law that I have ever known in my life I believe it is the right of a man, let him be where he may, whether on the soil of his own State or that of a neighboring state, in a peaceable manner to carry arms—to be there for any purpose when he is not violating any law, and, Sir, upon that proposition the criminal laws invite two propositions Such acts on the part of men are what we call "per se"—that is, within themselves—crimes, and such as are made by statute crimes One necessarily involves turpitude and the other does not. Now then; if we carry out this provision, we do this. We lay the foundation for a crime that never was recognized in any civilized country anywhere as a crime—that is, for a man to assist in the protection of the life and property of his neighbors, although it may be beyond the confines of his own state. There never was a system or principle of law that made that a crime. It is not "per se" a crime. Then we propose in our enactment here to make that which never was and is not a crime, but is lawful and commendable in itself—we propose to make that a crime and prohibit it. Mr. Chairman, I say that the principle of this thing is wrong in itself, and I ask this Convention to pause and think of these propositions before they launch blindly into it—I cannot say blindly, because the thing has been discussed here at some length. I do not desire to force my views upon this proposition, but I make these suggestions to this Convention, and I ask the members here to seriously stop and consider whether I am right or wrong. Upon mature reflection these are considerations that present themselves to me. I care not how any gentleman upon the floor of this Committee may think about it. I care not whether I am a majority or in the minority. It is my right, privilege and my duty in representing the State of Montana to express these convictions; and mark you, gentlemen, if this theory is carried out that is proposed in this Section, the time will come when good men and women and children in this Territory may have cause to regret it.

Mr. Fields, of Park: Mr. Chairman, have I the right to speak once more on the Resolution?

Mr. Robinson: By leave of the Committee.

Mr. Fields: The gentleman from Deer Lodge asserted that I had a hidden meaning in using the word working men. I might assert the same of him, that he had a hidden meaning in going up to the borders of our Territory to protect people from invasion, cruelty, etc. Why does he not bring back his argument to the place that he started from—the place that we aimed this article at. I tell you that in Pennsylvania, and I have got a report made by the Committee here in full, as I mentioned awhile ago. The Committee was appointed in a resolution presented to Congress February 2nd, 1888. The following gentlemen were appointed on that Committee: G. D. Tellman of South Carolina, W. J. Stone of Missouri, J. Logan Chapman of Michigan, John A. Anderson of Kansas, and A. X. Parker of New York. That Committee in their examination showed where two companies banded together, called in that valley, the Reading Devil Fish—have seven hundred and twelve policemen armed with Winchester rifles and revolvers, who stand guard over a mass of working men, twenty-two thousand in number, engaged in mining and fifteen thousand engaged on the railroads, making in all thirty-seven thousand persons, representing in all one hundred and seventy-five thousand persons, over whom they exercise the control that I would only give credit to where there is a despotic form of government which desires to condemn and intimidate and destroy the life and the property of its citizens. Now we do not in that article attempt to restrict or stop any protection to these people. We have left our clause or section upon an application to the Governor. I use the word Governor in the articles I presented, but the word Executive, I suppose, will cover my ground, and will be better adapted to the meaning and perhaps learning of some of the gentlemen present. I cannot possibly see where this is going to work any injustice whatever; and so far as any hidden meaning upon my part in saying that it was for the benefit of working men, and for their protection against others,—I believe it is time and I believe it is necessary that they should take some stand upon which to protect themselves and to aid themselves. And I stand here as the representative of the working man to see that he does get justice in our Constitution equally and on the same platform with every other person living in the State of Montana. We want equality and fairness with each and every one. Now we have two resolutions, or one resolution and the substitute offered by the gentleman from Gallatin. I am willing to accept the substitute of the gentleman from Gallatin in order to facilitate this matter and not cause any confusion, as it is claimed that it covers a little more ground than what mine did; but I find in that substitute there is no reference made in regard to the armed forces of the United States—our regular army, and if there is not some point in there it might be held to be in conflict with the privilege of moving infantry to be used in the State of Montana or for the transportation of United States troops to Montana for guard duty, or through the State. Of course I do not wish to see us step back to the old Maryland proclamation prohibiting arms, in days gone by. We understand, according to history, that that has all been done away with, and I am not in any sense an old rebel, because I was not living in those days, and I do not believe in presenting anything that would cover any such act as that. I believe in life, liberty and pursuit of happiness in the broadest sense, and I claim that, when the people of Pennsylvania are living under the Constitution of the United States, they are not enjoying those privileges of life, liberty and the pursuit of happiness; and further, that those people are in a position, with the Declaration of Independence read to them once a year, that makes it a farce and a lie in the face of it, when those people are not permitted to enjoy the blessings of life and liberty as citizens of the United States; and I believe that the time has come when those people have got to assert their rights, and have got to do it in a good, legitimate and lawful manner, and in no other way; and those rights will never be given to them unless they take a step in advance for the same. Now, I do not mean to be antagonistic to capital, I do not wish to make a king or peer or prince out of the working man; but I believe in giving him the just fruits of his labor and a just remuneration for the work he does; and I do not believe in having him down in the ditch digging, with a shot gun pointed at him, and not allow him to speak one word with his neighbor. I believe it is the right of every citizen to ask for more pay, and to receive it, if he can get it in a legitimate way. I do not believe we are asking too much for those people, in the face of what we profess here when we say that we propose to form a Constitution that will give us all equality, life and liberty, and the pursuit of happiness to the fullest evxtent.

Mr. Burleigh, of Custer: I desire to ask if an amendment would be in order?

Mr. Hogan, of Silver Bow: For information, before that is answered, I would like to ask how many amendments are in order?

The Chairman: An amendment to the amendment.

Mr. Hogan: Well, has not that been offered?

The Chairman. It has been withdrawn. The gentleman from Custer offers the following as an amendment to the amendment: "No armed force of any character shall ever be brought into the State of Montana, or organized in the State by any private person or persons or by any company or corporation, to influence or force any citizen of the State of Montana to either labor, or deter or influence any person from laboring against his will, under such fines and penalties as may be provided by law."

The amendment was seconded.

Mr. Burleigh, of Custer: Now, Mr. Chairman, while I am in favor of the greatest measure of human liberty that can be enjoyed by man on earth, I am equally in favor of throwing such safe guard around him as shall insure his safety against domestic violence, or violence of any kind; and I was not aware—it may be owing to my ignorance or lack of pursuit of information, that there was a condition of things, or even had been a condition of things in this Territory, where laboring men were environed by an armed force, or foreign forces brought in here in the interests of capital, to either compel them to labor against their will or to defer them from laboring, as they saw fit. I am most certainly in favor of the spirit of the resolution offered by the gentleman from Park county, and if I could be made to believe that an exigency has arisen in the Territory of Montana where its citizens were influenced or oppressed, or were liable to be influenced or oppressed by any force that is brought in from without the boundaries of the Territory of Montana, I would not only vote for that, or any other measure, but I would, at my time of life, shoulder my rifle and go out in defense of the liberties of the people. I have merely introduced this amendment for the sake of an opening wedge, to get up here and express my sentiments. While I do not believe, and cannot believe, that a condition of things exists here which calls for the insertion in the Constitution of Montana of a restrictive clause of the character which is embodied in the suggestion of my friend from Park county, if it does exist, I am heartily in favor of it But it is a matter of so grave importance that I would like to have it well considered and referred to a committee, and to a special committee, if necessary, for the express purpose of investigating the matter—studying it in all its bearings, and then presenting it here as a separate and independent article to go into the Constitution. I will withdraw the substitute.

The Chairman: The question then recurs upon the adoption of the proposition offered by the gentleman from Gallatin.

The Chair then put the question upon the adoption of the substitute of the gentleman from Gallatin (Mr. Luce), and the same was declared carried.

The Chairman: This brings us now to the consideration of Sections 13 and 14, which were postponed on yesterday.

Mr. Luce, of Gallatin: Mr. Chairman, I move that the further consideration of Sections 13 and 14 be for the present postponed, and that when the Committee arise it recommend to the Convention that Sections 13 and 14 be recommitted to the Committee on Irrigation.

The motion was seconded.

The Chair stated the motion.

Mr. J. K. Toole, of Lewis & Clarke: Mr. Chairman, I offer the following amendment.

The Chairman: With the consent of the gentleman from Gallatin, I will substitute the word "committed" for the word "recommitted" in his motion.

The gentleman from Lewis & Clarke, Mr. Toole, now offers to amend Section 13 by striking out the same and inserting the following in lieu thereof:

"Section 13. Private property shall not be taken or damaged for public use without just compensation having been first made or paid into court for the owner."

The Clerk here announced that this was intended as a substitute for both Sections 13 and 14 in the printed copy, and that the same should be numbered Section 14.

The Clerk then read the following, as offered by Mr. Toole of Lewis & Clarke:

"Amend Section 15 by striking out the same and inserting the following in lieu thereof:

Section 15. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, distribution or other beneficial use and the right of way over the lands of others for all ditches, drains, flumes, canals and aqueducts necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same shall be held to be a public use."

The amendment was seconded.

Mr. Hogan, of Silver Bow: Mr. Chairman, on yesterday was not there a motion made to combine Sections 13 and 14 into one section.

The Chairman: The Chair understands there was.

Mr. J. K. Toole, of Lewis & Clarke: The understanding was that they were to be considered together.

Mr. Clark, of Silver Bow: Mr. Chairman, I desire to have the whole of the article read now, with the amendment offered by the gentleman from Lewis & Clarke, so that we can see how it reads.

The Clerk read the sections and substitute, as requested.

Mr. Clark, of Silver Bow: I would ask the gentleman from Lewis & Clarke if he considered the propriety of inserting private ways in this—if he has discussed that question? I would like to offer an amendment if it would not interfere with the intent and purposes of the substitute, that private ways—roads—be inserted also.

Mr. Collins, of Cascade: Mr. Chairman, I hope we will get rid of this proposition before we adjourn, and for the purpose of doing that I suggest that the motion of the gentleman from Gallatin (Mr. Luce) will be acted upon. I hope it will be lost I make the suggestion simply that we may dispose of it before adjournment.

Mr. J. K. Toole, of Lewis & Clarke: Mr. Chairman, I have offered this amendment because I consider that the fundamental law should speak in no uncertain language upon this absorbing question. We are directly interested in promoting, by every constitutional method, the storage and disposition of water by means of reservoirs, ditches and canals. The subject is not only of local concern, but it is attracting national attention. In order to accomplish desired results the right of eminent domain must be invoked to secure the right of way for canals and ditches and the sites for reservoirs for storage and distribution of the water, and in order to secure the condemnation of private property for this purpose, the use to which the property is to be applied must not be a private but a public use. I think it entirely competent to say in this instrument that these particular uses are public. The term public use must have a meaning controlled by the necessity and not that which it generally bears. Our condition is anomalous—our country may be said to be an arid country where an artificial water supply is necessary for a successful cultivation of the soil. The authorities are not uniform in expounding the doctrine of eminent domain, but considering our condition it is safe to say that we are within that principle in adopting this amendment. It has been repeatedly held that you can appeal to the doctrine of eminent domain to protect, drain and render valuable lands which, by the overflow of a river, might otherwise be an extensive and worthless swamp. Here the conditions are changed. We do not seek to drain lands, but by irrigation to flow water upon the surface. By analogy and parity of reasoning the same principle is applicable. In order to protect, reclaim and render valuable our lands, which otherwise would be valueless and a waste, this right must be upheld. It is necessary to declare the use of water which is sold, rented or distributed, a public use, in order to protect the public against vindictive and arbitrary owners and corporations who would sell to one and refuse to sell to another, or who would charge one person one price and another person another price. As before suggested, our condition with respect to these matters is peculiar Water and the right of way for ditches, canals and flumes, as well as for sites for reservoirs, is a conceded necessity. By this method we declare what is a matter of common knowledge. It has been held that when the government is supplying its own needs, or is furnishing facilities for its citizens in regard to those matters of public necessity, convenience or welfare, which on account of their peculiar character and the difficulty—perhaps impossibility—of making provision for them otherwise, it is alike proper, useful and needful for the government to provide. The amendment emphasizes that principle, and, in my opinion, makes it impossible for the narrow selfish and unfriendly conduct of an individual to impede the settlement, cultivation and development of the State. No problem connected with our present or future concerns us more than this. I therefore think it not only wise but expedient to provide as far as we can, for the most efficient and comprehensive system of irrigation, and the right to condemn private property is an indisputable condition to that end.

Mr. Knowles, of Silver Bow. Mr. Chairman, I would like to ask the gentleman whether or not the language that is used there would be construed so as to give only the right of way to persons who are constructing ditches for the purposes of distribution and sale.

Mr. Toole. I would say to the gentlemen that the language is broader than that, the language is "sale, rental, distribution or other beneficial use."

Mr. Knowles, of Silver Bow: It ought to be broad enough at all events so as to cover what are denominated private ways for ditches. I am fully aware of the condition we are living under in this matter, and while I am willing to vote for this substitute, I really think that it will not mend matters much. I do not think that this Convention can ever, by a clause in it, say that a horse is a cow. I do not think that any court would come around, after this Convention should say that, and say that it was a cow; and so when they say that a private way is a public use, where it is only for one individual, I do not believe that the courts will so construe it. Such terms as private ways and public ways are old. I know that courts have gone very far in such matters: Whenever they have seen a great necessity existing for putting a new construction upon the law and giving new interpretations to the terms, they have been disposed to do so; and I believe that the courts would uphold, as far as they could, the old provisions of this bill of rights But I would say to the gentlemen here that I do not believe this matter in the bill of rights is going to accomplish what they want. I believe there will have to be a positive grant of legislation upon the subject, and that either the Irrigation Committee or the Committee upon Legislative Powers have got to make a positive provision upon this subject, granting the legislature the power to establish these ways. I do not believe we can do any better in this matter than to vote for the substitute, although I do not think that it adds anything at all to the original provision that was made.

Mr. Joy, of Park: I move you, Sir, that the Committee do now arise, report progress, and ask leave to sit again.

The motion was seconded.

The Chair put the motion, and a division being called for, the motion was declared carried.

IN CONVENTION

President Clark in the Chair.

The Convention was called to order.

Mr. Joy, of Park: I move you, sir, that we do now take a recess until two o'clock.

The motion was seconded.

The President: Before that motion is put, the Chair will hear the report of the Chairman of the Committee of the Whole.

Mr. Callaway, of Madison: Mr. President, The Committee of the Whole, having under consideration General File No. 1, have made some progress, and ask leave to sit again,

The President: The Chairman of the Committee of the Whole reports that they have made progress, and asks leave to sit again. If there be no objection this will be granted.

The Chair then put the question on the motion of the gentleman from Park (Mr. Joy), the same was declared carried, and the Convention took a recess until two o'clock.

RECESS

2, P. M.

The Convention was called to order by the President.

The Clerk called the roll.

Mr. Eaton, of Park: Mr. President, it being out of order at this moment, I would ask unanimous consent to introduce a petition, with an accompanying letter and would say that I am not familiar with the contents of the letter, which has just been handed to me, and while the letter, I notice, is rather lengthy to be read in Convention, I would say that there is a postscript which will probably cover all the necessary features, so far as the Convention is concerned. I ask unanimous consent for its consideration.

The President: Is there any objection to granting the request of the gentleman from Park. If there be none the communication will be received and read.

The Clerk then commenced the reading of a certain Memorial to the Governors and Conventions of the coming new States.

Mr. Callaway asked, as a matter of information, whether the Memorial came from parties outside of Montana, and, if so, that he would move that it be laid upon the table, no matter what the nature of the memorial might be.

The President: The gentleman can object to its consideration.

Mr. Collins, of Cascade: I would like to have it read for the information of the Convention.

Mr. Eaton, of Park: I did not quite understand the gentleman, but if there is any objection to its consideration, I would simply ask for its return, so that I can properly introduce it at some other time.

Mr. Callaway, of Madison: Mr. President, I do not object upon the grounds that it is not in the order of business, I object because it is a memorial presented here, or a petition presented from people here, who have no right to petition or memorialize this Convention. It is right that any man or woman in the Territory of Montana may address this Convention in a respectful way upon any matter, but I deny the right of outsiders, or people who are non-residents of Montana, to address this Convention in any way except by the universal consent of the Convention.

The President: The gentleman desires the petition to be returned to him for introduction at some other time.

Mr. Dixon, of Silver Bow: Mr. President, if there be no objection, in order to expedite matters, I would like to ask that the Judiciary Committee be allowed to report.

The President: If there be no objection, the report of the Judiciary Committee will be received.

Mr. Dixon asked that the report be received and referred to the Committee on Printing.

The President: If there be no objection, the report of the Chairman of the Judiciary Committee will be received and referred to the Committee on Printing There are two reports, one on the Judiciary, and one on the Pardoning Power. These reports will both be received and referred to the Committee on Printing, with orders that they be printed.

The Clerk then read as follows:

"Mr. President: I am instructed by the Committee on Judiciary and Judicial Departments to report the following, and recomment its incorporation into the Constitution as the Article on the Judiciary Department."

(Signed) DIXON, Chairman.

ARTICLE ON JUDICIAL DEPARTMENTS.

ARTICLE.

Judicial Departments.

Section 1. The Judicial power of the State shall be vested in the Senate sitting as Court of Impeachment, in a Supreme Court, District Courts, Justices of the Peace, and such other inferior courts as the Legislative Assembly may establish in any incorporated city or town.

Supreme Court.

Sec. 2. The Supreme Court, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, and shall have a general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law.

Sec 3 The appellate jurisdiction of the Supreme Court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of **habeas corpus, mandamus, quo warranto, certiorari,** prohibition and injunction, and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. When a jury is required in the Supreme Court to determine an issue of fact, said court shall have power to summon such jury in such manner as may be provided by law. Each of the justices of the Supreme Court shall have power to issue writs of **habeas corpus** to any part of the State, upon petition by, or on behalf of, any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any District Court of the State, or any judge thereof; and such writs may be heard and determined by the justice, or court, or judge, before whom they are made returnable. Each of the Justices of the Supreme Court may also issue and hear and determine writs of **certiorari** in proceedings for contempt in the District Court, and such other writs as may be authorized by law to issue.

Sec. 4. At least three terms of the Supreme Court shall be held each year at the seat of government

Sec. 5. The Supreme Court shall consist of three justices, a majority of whom shall be necessary to form a quorum or pronounce a decision; but one or more of said justices may adjourn the court from day to day, or to a day certain; and the Legislative Assembly shall have the power to increase the number of such justices to not less nor more than five.

Sec. 6. The Justices of the Supreme Court shall be elected by the electors of the State at large, as hereinafter provided.

Sec. 7. The term of the office of the Justices of the Supreme Court, except as in this Constitution otherwise provided, shall be six years.

Sec. 8. There shall be elected at the first general election provided for by this Constitution, one Chief Justice and two Associate Justices, who shall constitute the Judges of the Supreme Court, and they shall hold their offices until their respective successors are elected and qualified. The terms of office of said Justices shall be designated on the ballots at the time of their election. The Chief Justice shall at said first election be elected for the term of three years, and said two Associate Justices, one for the term of five years, and one for the term of seven years,, and after said first election one Justice (or more, if the Legislative Assembly shall increase the members to five) shall be chosen every two years, and the terms of office of said additional Justices shall be fixed by law in such manner that at least one of said Justices shall be elected every two years. The Chief Justice shall preside at all terms of the Supreme Court, and in case of his absence the Judge having the shortest term to serve shall preside in his stead.

Sec. 9 There shall be a clerk of the Supreme Court, who shall hold his office for the term of six years, except that the clerk first elected shall hold his office only until the general election in the year 1892, and until his successor is elected and qualified. He shall be elected by the electors at large, of the State, and his compensation shall be fixed by law, and his duties prescribed by law, and by the rules of the Supreme Court.

Sec. 10. No person shall be eligible to the office of Justice of the Supreme Court, unless he shall have been admitted to practice law in the Supreme Court of the Territory or State of Montana, be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in said Territory or State at least two years next preceding his election.

District Court.

Sec. 11. The District Court shall have original jurisdiction in all cases at law, and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all cases in which the debt, damage, claim or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and in all criminal cases amounting to felony and all cases of misdemeanor not otherwise provided for, of actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of actions of divorce and for annullment of marriage, and of all such special actions and proceedings as are not otherwise provided for. And said Courts shall have the power of naturalization, and to issue papers therefor in all cases where they are authorized so to do by the laws of the United States. They shall have appellate jurisdiction in such cases arising in justices and other inferior courts in their respective districts as may be prescribed by law and consistent with this Constitution. Their process shall extend to all parts of the State, provided that all action for recovery of, the possession of, quieting the title to, or for the enforcement of liens upon real property shall be commenced in the county in which the real property, or any part thereof, affected by such action or actions, is situated. Said courts and the judges thereof shall have power also to issue, hear and determine, writs of **mandamus, qou warranto, certiorari, prohibition, injunction** and other original and remedial writs, and also all writs of **habeas corpus**, on petition by, or on behalf of, any person in actual custody in their respective districts. Injunctions, writs of **prohibition**, and **habeas corpus**, may be issued and served on legal holidays and non-judicial days.

Sec. 12. The State shall be divided into judicial districts in each of which there shall be elected by the electors thereof one judge of the District Court, whose term of office shall be four years, except that the district judges first elected shall hold their offices only until the general election in the year 1892, and until their successors are elected and qualified. Any judge of the District Court may hold court for any other district judge, and shall do so when required by law.

Sec 13. Until otherwise provided by law, said districts shall be constituted as follows: First District, Lewis and Clarke county. Second District, Silver Bow county; Third District, Deer Lodge county; Fourth District, Missoula county; Fifth District, Gallatin county; Sixth District, Jefferson county; Seventh District, Custer county; Eighth District, Beaverhead and Madison counties; Ninth District, Park and Yellowstone counties; Tenth District, Cascade and Meagher counties; Eleventh District, Fergus and Dawson counties; Twelfth District, Choteau county.

Sec. 14. The Legislative Assembly may increase or decrease the number of judges in any judicial district: Provided, That there shall be at least one judge in any district established by law; and may divide the State, or any part thereof, into new districts; Provided, That each be formed of compact territory and be bounded by county lines, but no changes in the number or boundaries of districts shall work a removal of any judge from office during the term for which he has been elected or appointed.

Sec. 15. Writs of error and appeals shall be allowed from the decisions of the said district court to the Supreme court, under such regulations as may be prescribed by law.

Sec. 16. No person shall be eligible to the office of Judge of the District Court unless he be at least twenty-five years of age, and a citizen of the United States, and shall have been admitted to practice law in the Supreme Court of the Territory or State of Montana, nor unless he shall have resided in the State or Territory at least one year next preceding his election. He need not be a resident of the district for which he is elected at the time of his election, but after his election he shall reside in the district for which he is elected during his term of office.

Sec. 17 The District Court in each county, which is a Judicial District by itself, shall be always open for the transaction of business, except on legal holidays and non-judicial days. In districts where two or more counties are united, until otherwise provided by law, the district judges shall fix the terms of court, provided that there shall be at least four terms a year held in each county.

Sec. 18. There shall be a clerk of the District Court in each county, who shall be elected by the electors of his county. The clerk shall be elected at the same time and for the same term as other county officers The duties and compensation of the District Clerk shall be as provided by law.

County Attorneys.

Sec. 19. There shall be elected at the general election in each county of the state, one County Attorney, whose qualifications shall be the same as are required for Judges of the District Courts, except that he need not be over twenty one years of age and whose term of office shall be two years He shall have a salary to be fixed by law. One-half of which shall be paid by the state and one-half by the county in which he is elected, he shall in addition to said salary receive such fees as may be provided by the Legislative Assembly and shall perform such duties as may be required by law.

Justices of the Peace.

Sec. 20. There shall be elected in each organized township of each county by the electors of such township at least two Justices of the Peace, who shall hold their offices, except as otherwise provided in this Constitution, for the term of two years. Justices Courts shall have such original jurisdiction within their respective counties as may be prescribed by law, except as in this Constitution otherwise provided; Provided that they shall not have jurisdiction in any case where the debt, damage, claim, or value of the property involved exceeds the sum of three hundred dollars.

Sec. 21. Justices Courts shall not have jurisdiction in any case involving the title or right of possession of real property, nor in cases of divorce, nor for annullment of marriage, nor of cases in equity nor shall they have power to issue writs of habeas corpus, mandamus, certiorari, quo warranto, injunction, or prohibition, nor the power of naturalization; nor shall they have jurisdiction in cases of felony, except as examining courts, nor shall criminal cases in said courts be prosecuted by indictments; but said courts shall have such jurisdiction in criminal matters, not of the grade of felony, as may be provided by law, and shall also have concurrent jurisdiction with the District Court, in cases of forcible entry and unlawful detainer.

Sec. 22. Justices Courts shall always be open for the transaction of business, except on legal holidays and non-judicial days.

Sec. 23. Appeals shall be allowed from Justices Courts, in all cases, to the District Courts, in such manner and under such regulations as may be prescribed by law.

Police and Municipal Courts.

Sec. 24. The Legislative Assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to time, who shall have jurisdiction in all cases arising under the ordinances of such cities and towns, respectively; such police magistrates may also be constituted ex-officio justices of the peace for their respective counties.

Miscellaneous Provisions.

Sec. 25. The Supreme and District Courts shall be courts of record.

Sec. 26. All laws relating to courts shall be general, and of uniform operation throughout the State; and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, shall be uniform.

Sec. 27. The style of all processes shall be "The State of Montana" and all prosecutions shall be conducted in the name and by the authority of the same.

Sec. 28. There shall be but one form of Civil Action, and law and equity may be administered in the same action.

Sec. 29. The justices of the Supreme Court and the judges of the District Courts shall each be paid quarterly a salary, which shall not be increased or diminished during the term for which they shall have been elected. The salaries of the justices of the Supreme court shall be paid by the State. One-half of the salary of each district judge shall be paid by the State, and the other half shall be paid by the county, where only one county is included in a Judicial District; and where more than one county is included in a Judicial District, the said other half of said salary shall be paid by the counties included in said district, in proportion to the amount of assessable property in each of such counties according to the last general assessment for taxation. Until otherwise provided by law, Justices of the Supreme Court shall be paid a salary of five thousand dollars per annum each. Until otherwise provided by law the salaries of the several District Judges shall be as follows: That of the Judges of the First, Second and Third Districts, Four Thousand Dollars per annum each. That of the Judges of the Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, Eleventh and Twelfth Districts, Three Thousand Dollars per annum each. And that of the Judge of the Ninth District, Thirty-five Hundred Dollars per annum.

Sec. 30. No Judge of the Supreme or District Court shall accept or receive any compensation, fee, perquisite or emolument for or on account of his office in any form whatever, except the salary provided by law.

Sec. 31. No Judge, or Clerk of the Supreme Court, or of any District Court, shall act or practice as an attorney, or counsellor at law in any court in this State during his continuance in office.

Sec. 32. The Legislative Assembly may provide for the publication of decisions and opinions of the Supreme Court.

Sec. 33. All officers provided for in this article, excepting Judges of the Supreme Court, who shall reside within the State, shall respectively reside during their term of office in the District, County, Township, Precinct, City or Town for which they may be elected or appointed.

Sec. 34. Vacancies in the office of the Supreme or District Court or Clerk of the Supreme Court shall be filled by appointment, by the Governor of the State, and vacancies in the office of County Attorney, or Clerk of the District Court and Justices of the Peace shall be filled by appointment by the Board of County Commissioners of the County where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next general election, and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

Sec. 35. No Justice of the Supreme Court or District Judge shall hold any other public office while he remains in the office to which he has been elected or appointed.

Sec. 36. A cause in the District Court may be tried by a Judge pro tempore who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the cause; and in such case any order, judgment, or decree, made or rendered therein by such Judge pro tempore, shall have the same force and effect as if made or rendered by the court with the regular Judge presiding.

Sec. 37. Any Judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office.

The Clerk again read as follows:

"Mr. President: I am instructed by the Committee on Judiciary and Judicial Departments, including Pardoning Power, to report the following, and to recommend its incorporation into the Constitution as the Article on Pardoning Power."

(Signed) DIXON, Chairman.

ARTICLE ON JUDICIAL DEPARTMENTS.

Article ....

Pardoning Power.

Section 1. The Governor shall have the power to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutation of punishments and respites after conviction and judgment for any offenses committed against the criminal laws of the State; Provided, however, That before granting pardons, remitting fines and forfeitures, or commuting punishments, the action of the Governor concerning the same shall be approved by a Board, or a majority thereof, composed of the Secretary of State, Attorney General and State Auditor, who shall be known as a Board of Pardons.

Sec. 2. The Legislative Assembly shall by law prescribe the sessions of said Board, and the manner in which applications shall be made, and regulate the proceedings thereon. But no fine or forfeiture shall be remitted, and no commutation or pardon granted, except upon the approval of a majority of said Board, after a full hearing in open session, and until proofs, notice of time and place of hearing, and the relief applied for shall be given by publication in some newspaper of general circulation in the county where the crime was committed, at least once a week for two weeks. The proceedings and decision of the Board shall be reduced to writing, and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by them, and filed, with all papers used upon the hearing, in the office of the Secretary of State.

Sec. 3. The Governor shall communicate to the Legislative Assembly, at each regular session, each case or remission of fine or forfeiture, reprieve, commutation or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon or reprieve, with the reason for granting the same, and the objections, if any, of any member of the Board made thereto.

The President. What is the pleasure of the Convention?

Mr. Dixon, of Silver Bow: Mr. President, I move that the Convention do resolve itself into a Committee of the Whole for the consideration of the General File.

The motion was seconded.

Mr. Rickards, of Silver Bow: Before that motion is put; as a matter of privilege, may I ask for leave of absence until Monday?

The President: The gentleman will be excused until Monday, if there be no objection.

The Chair then put the question on the motion of the gentleman from Silver Bow, that the Convention resolve itself into a Committee of the Whole for the consideration of the General File, and the same was declared carried.

The President called the gentleman from Madison, Mr. Callaway, to the Chair.

IN COMMITTEE OF WHOLE.

Mr. Callaway, of Madison, in the Chair.

The Committee was called to order.

The Chairman: The Committee had under consideration the amendment offered by the gentleman from Lewis & Clarke to Sections 13 and 14. The gentleman from Silver Bow (Mr. Clark) offers an amendment to that substitute. The substitute is as follows: "The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, distribution or other beneficial use, and the right of way over the lands of others for all ditches, drains, flumes, canals and aqueducts necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use."

Mr. Clark, of Silver Bow: I move to amend by striking out the word "and" before the word "aqueducts," and insert the words "and roads" after the word "aqueducts."

Mr. J. K. Toole, of Lewis & Clarke, called for the reading of the substitute as amended.

The Clerk read same.

Mr. J. K. Toole, of Lewis & Clarke: I take it, Mr. Chairman, that the object of the gentleman who introduces that, is that he does not mean to confine the meaning of roads simply that are used in connection with irrigating ditches, but that it is for the purpose of allowing the condemnation of private property for private ways; or is it intended to embrace roads to be used in connection with irrigating ditches, flumes, etc?

Mr. Clark, of Silver Bow: I would state to the gentleman from Lewis & Clarke my object in inserting that word "roads" was to cover such roads as would be necessary in building reservoirs. It would be necessary to have a private way in building reservoirs and improvements of that character, and it is simply to include the use of those ways. Now there is another matter that I feel ought to be incorporated, unless it is covered by the principle of eminent domain, and that is with regard to roads built for the purpose of gaining access to mining property.

Mr. J. K. Toole, of Lewis & Clarke: I think the section amply covers that now, as it stands, upon the principle that when the condemnation shall have taken place that these private ways are open to the public use, and I believe it is sufficiently provided for under the general proposition that private property shall not be taken for public use without just compensation, and the money paid for the owner, if possible, into court. It is certainly embodied in that, and it rests upon the proposition that when condemnation is had, even to a private way, that after it is once established, it is for public use likewise, and not simply for the use of the individual to whom it is granted.

Mr. Knowles, of Silver Bow: I would state in relation to that, that when we use the term "road" we mean a public highway, and that comes within the general powers of the government to establish rules. One of the functions of the government is to establish rules, and the only provision is that this bill of rights embodied in the Constitution shall not take private property for private use; that is, taking it for a road without just compensation. Then there is a broader line, in which there is a conflict of decisions, and that is what is called "private ways" Now I find, as laid down in Lewis on Eminent Domain, the courts have held that where roads of necessity connect a farm with a public highway or a public place of resort, and everybody has a right to travel on it, that it is a public highway. The title does not pass from the party. But where, as in the case of a private highway, the title to the way passes to the man and his assigns, that is taking private property for private use and unless there is some provisions of the Constitution allowing that, it cannot be done. I believe in this old Bill of Rights here before it was amended—they used the words "private ways of necessity"; and then left with the legislature to provide what should be a necessity.

Mr. Clark, of Silver Bow: I do not desire to complicate this question, and therefore withdraw my motion in favor of the original proposition.

The Chairman: The gentleman from Silver Bow withdraws his amendment. The question now is upon the substitute offered by the gentleman from Lewis & Clarke.

The Chair then put the question on the motion of the substitute offered by Mr. Toole of Lewis & Clarke, and the same was declared carried, and adopted in lieu of Sections 13 and 14.

The Chairman. This, Gentlemen of the Committee, disposes of General File No. 1.

Mr. Clark, of Silver Bow: Mr. Chairman, I move that the Committee do now arise, and instruct the Chairman to report File No. 1 to the Convention with the amendments as passed.

Mr. Robinson, of Deer Lodge: I trust the gentleman will withdraw that motion for a moment.

Mr. Mayger, of Lewis & Clarke: Mr. Chairman, in Section 15 as adopted yesterday by the Committee of the Whole, in the fourth line, it reads, "and a speedy public trial by an impartial jury in the county or district in which the offense has been committed." I would like to ask for information of this Convention, does not that include the right of a man to take a change of venue, for instance, from this county into another district, if he cannot, for any reason, be tried by a jury in his own county?

The Chairman: I would inform the gentleman that after a section is passed we cannot return to the consideration of it.

Mr. J. K. Toole, of Lewis & Clarke, asked for the unanimous consent to recur to the consideration of the section.

Mr. Robinson, of Deer Lodge. Mr. Chairman, there are two sections I desire to amend, 1st, amend Section 17 by inserting therein, after the words "error of law," in line 3, as follows: "or, if any jury or the Judge of the court shall from sickness or other cause become unable to act after the impanelling of the jury." I will state that Section 17 reads as follows: "That no person shall be compelled to testify against himself in a criminal case, nor shall any person be twice put in jeopardy for the same offense if the jury disagree, or if the judgment be arrested after verdict, or if the verdict be arrested by error of law, the accused shall not be deemed to have been in jeopardy" Now this amendment comes in after the words "error of law."

The amendment was seconded

The Chairman: The gentleman from Deer Lodge asks unanimous consent to recur to Section 17, for the purpose of offering an amendment. If there be no objection it is so ordered.

The Clerk read the amendment.

The Chair then put the question on the amendment of the gentleman from Deer Lodge, and the same was declared carried.

Mr. Robinson: I now desire to amend Section 15, which I will read, by inserting after the word "behalf," on line 3, "under such regulations as the Legislature may prescribe as to paying for their attendance and process.

The motion was seconded.

The Chair stated the question.

Mr Robinson, of Deer Lodge: I will state to the Convention the object in offering that amendment is that, as the Section now reads the construction that would probably be placed upon it would be the proper construction,—that in all these criminal processes the defendant would have the right to call any number of witnesses. The Section reads "In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf," etc. Now, as that stands, the interpretation would be that no legislation could be had except on the basis that the State would be compelled to pay for an unlimited number of witnesses the defendant might see proper to order. The idea is to place it in such a position as to limit the number of witnesses the State will pay for, and for process, and such things as that. The idea is to place the matter in such a condition that if the Legislature sees fit to limit the number of witnesses that the State shall pay for the defendant, that it may do so. In many of the states of the Union—it is so in the United States courts, and the United States does not pay for the witnesses of the defendant at all—in some of the states they pay for a limited number, and pay for them only on the order of the Judge that the witnesses are necessary. Now my object is to place that in the Constitution in a condition so that the

Legislature of Montana hereafter may regulate that if they desire it. As a question of practice, we know that an unlimited number of witnesses are summoned without any use whatever, because they can get their attendance without costing the defendant anything. The object is to put a check on that if the Legislature sees fit to.

Mr. Durfee, of Deer Lodge: I am in favor of the amendment proposed by Mr. Robinson for this reason: when I was prosecutor of Deer Lodge county, a case came under my observation where the defense summoned nineteen witnesses, not one of whom was placed upon the stand. Those nineteen witnesses cost the county something over seven hundred dollars. For that reason I am in favor of something of the kind being embodied in the Constitution.

The Clerk read the Section as contemplated by the amendment of the gentleman from Deer Lodge.

Mr. Burleigh, of Custer: Mr. Chairman, it seems to me we are treading on dangerous ground when we undertake to go in and limit the number of witnesses that the defendant may call in his defense. I do not believe there is very much danger of abusing this right. It is true that the gentleman from Deer Lodge may be alarmed on account of there having been more witnesses summoned in a certain criminal action in his county than may have been necessary. I have seen that thing done But I do not believe it can be limited with safety to the honest and fair administration of the criminal law. I know that there are frequently more witnesses summoned than are necessary; but how does the defendant know what is to be brought up against him? If there are ten witnesses summoned for the prosecution, and there are eleven witnesses who know that he is innocent of the charge with which he is accused, and there is a preponderance of evidence, I know of no reason why he should be restricted to seven or eight or nine witnesses. It is true that in some cases it may be burdensome; but so is the administration of criminal law burdensome in any case. But it is one of the rights guaranteed by the Constitution, and it seems to me that it is one of the most sacred rights written in the Constitution of the United States, or that can be written in the Constitution of Montana. I do not believe that it is safe to restrict; if I did, I would certainly vote for the amendment; but, believing, as I do, that it is not safe, I shall be compelled to vote against it; and I do not believe in the main there is danger of increasing the expenses unnecessarily in the administration of criminal law by allowing the defendant to summon the number of witnesses that he or his counsel may deem necessary to prosecute his defense.

Mr. Robinson, of Deer Lodge: I think the gentleman is laboring under a misapprehension. This amendment does not propose to limit it at all, but proposes to put the Constitution in such shape that, if the Legislature sees fit hereafter to make this limitation, it shall have the right to do so.

Mr. Burleigh: I am opposed to that. There are restrictions enough in it now.

Mr. Collins, of Cascade: I think the amendment offered by the gentleman from Deer Lodge is in the line of reform, and I believe every gentleman in this room who has attended sessions of grand juries or district courts, or has seen the innumerable witnesses before probate courts and justices of the peace, who have had no business there at all except for the purpose of getting public sentiment to dismiss the prosecution, will bear me out in my view of the matter. In a number of cases I have seen hordes of witnesses brought together for that purpose alone, and I believe this amendment of the gentleman from Deer Lodge is greatly in the line of reform, and I hope it will pass. It is not right the people of the State should be burdened with that class of witnesses.

Mr. Luce, of Gallatin: I do not understand that the amendment is intended to limit the number of witnesses, but the number the State shall pay for. The defendant may have as many witnesses as he is able to bring. I am in favor of the amendment.

Mr. Burleigh, of Custer: That is not the spirit of the law—(interrupted)

The Chairman: The gentleman from Custer is out of order. The gentleman from Silver Bow has the floor.

Mr. Knowles, of Silver Bow: Mr. Chairman, it is provided here that a man shall have compulsory process for his witnesses. Then it is proposed to give the power to the Legislature to say how many of those witnesses the State shall pay for. Now, how does the witness know that he is one of the witnesses that is going to be paid? You are going to give a man the power to send out for as many witnesses as he wants, and then you are going to put a limitation on that and say that four, for instance, only are to be paid for. Now, how does a man know that he is one of the four, and, as Dr. Burleigh has said, we are treading upon sacred ground here. It has been found by the experience of our race that men who are tried for offenses should have every facility to make a defense; that the courts should be open to them; that they should have jurors from the citizens of the county or the community where they live to try their offenses; that they should have compulsory process for witnesses—and because somebody has abused this power, as in one instance cited here in Deer Lodge county, it is proposed to restrict this right—put it down to such number as the Legislature may see fit. I think we had better stand by the old landmarks. We have grown up in these ways, we have become civilized—we have become a great people, and other nations are looking now to these common law principles. In Spain they have adopted this jury system and the right of compulsory process for witnesses; in Italy they have adopted it, and it is in the line of the protection of the people against arbitrary power. We have to some extent abolished the grand jury system. Now, let us not make an entire reformation in this matter—do not think that we are so much wiser than our fathers about this matter and try to put in a clause here that would inaugurate an era of littleness,—which is about the amount of it. It is not every man that is accused of crime that is guilty There is a disposition in some quarters to cry out whenever a man is accused of crime that he is guilty. There is not a homicide committed in the country that every newspaper which discusses the matter does not denounce as a murder at the start. "Another Murder." They do not stop to consider any of the circumstances at all, and I think it is time for us to pause awhile in this career and consider for a moment that the rights of the citizen should be protected.

Mr. Burleigh, of Custer· I would like to make a few remarks more in connection with what the gentleman from Deer Lodge has so justly stated, but I would like to hear this matter discussed a little more liberally, for it is a matter of great importance, by some of the older members upon this floor, for whom I have great respect. It is no new question, it is one that has agitated the public mind for one thousand years. The time once was when the government, in the hands of a despot, could go out and take one of its subjects, and go into a sham investigation into the cause of his guilt, and if it was deemed necessary to convict him without witnesses, without counsel, without forms of law; and to a very great extent it is carried on now in some parts of the world, and in some parts of what is termed the civilized world. Why is it that the government is allowed to go out, on suspicion,, and lay its heavy hand upon one of its citizens, deprive him of liberty, lock him up and charge him with the crime of murder, larceny, or any other crime? It is an arbitrary and despotic power, but it has been deemed necessary to tolerate it under certain restrictions for the safety of the State. Then what? The government says by way of recompense, "this man shall have a right to a fair and impartial trial by a jury of his peers; he shall have compulsory process to produce witnesses in supoprt of his innocence; and while he goes into court with the heavy hand of the law laid upon him, nevertheless, he shall have an impartial trial, and he shall have compulsory process to bring the witnesses in to prove his innocence." The government of the United States and the government of England, for the last five hundred years, has not gone beyond that; and now to come in here and require a man upon whom suspicion, perhaps unfortunately, may rest to be deprived of the full measure of protection which the Constitution of England and the Constitution of this country has thrown around him, seems to me to be a step backwards and in favor of the arbitrary, despotic power.

The Chairman: How can a Legislature determine in any case how many witnesses a man should have?

Mr. Burleigh: It can no more determine it than we can determine how many angels there are required to surround the throne of God and keep it in place; and I shall vote against this amendment.

The question on the motion of the gentleman from Deer Lodge was then put, and declared lost.

Mr. J. K. Toole, of Lewis & Clarke, sent up an amendment to Section 15.

The Chairman: The gentleman from Lewis & Clarke offers the following amendment to Section 15: "Amend Section 15 by adding thereto the following: "subject to the right of the State to have a change of venue for any of the causes for which the defendant may obtain the same."

The amendment was seconded.

The Chair put the question upon the amendment of the gentleman from Lewis & Clarke, and the same was declared carried.

Mr. Robinson, of Deer Lodge: I desire to call the attention of the Convention to some provisions contained in Sections 15 and 16. I do not know whether the members of the Convention have noticed the inconsistency that is presented in those two sections or not. It is this: that in criminal prosecutions the accused shall have the right to defend, etc., "to meet the witnesses against him face to face." That is an old constitutional guarantee, so far as that is concerned. Now, what I desire to call the attention of the Convention to is this: Section 15 reads, "That no person shall be imprisoned for the purpose of securing his testimony in any case longer than shall be necessary to give his deposition; if he can give security for his appearance at the time of trial he shall be discharged," etc. "If he cannot give security, his deposition shall be taken in the manner to be prescribed by law." This presents a legal contradiction. I have not prepared an amendment to it; but as it stands it is a legal conundrum; that is, that the defendant shall be entitled to have his witnesses face to face before him, and that the witnesses shall not be imprisoned. Now then, if a witness is brought up and required to give security to appear for the prosecution, why there is no object whatever in taking his deposition; it is a mere nullity. It is never required that a witness be imprisoned on the part of the defense. This has reference to the depositions on the part of the prosecution. Now then, the first part of it is a contradiction to the second; it would require an entirely useless act to take the deposition of a witness for the prosecution in a criminal case if he must meet the witness face to face (reading) "If he cannot give security." "And if he cannot give security for his appearance at the next term of court, or won't do it—if he cannot give security, his deposition shall be taken in the manner to be prescribed by law. That provides for an entirely useless thing, and falls as a dead letter. There is a contradiction in that that cannot be carried out. I trust that some member of the bar will find some way out of this difficulty by suggesting some amendment.

Mr. Dixon, of Silver Bow: Mr. Chairman, I do not think that provision is necessarily contradictory—that the deposition to be taken can only be taken in the presence of the accused. The accused would have the same opportunity to cross-examine the witnesses as he would on the trial. I know that the same provision is contained in the Constitution, and I never heard the question yet being raised. If it were taken with the purpose of secrecy, when the accused was not present, it would be a different matter; but, as the matter stands, I think the provision is right.

Mr. Knowles, of Silver Bow: I would state that I have conversed with the Committee on the Bill of Rights, and they changed the old bill of rights in the Constitution of 1884 for the very purpose of obviating the difficulty that the gentleman has pointed out. They claim, and I think correctly, that those two provisions of the Article are to be construed together, and that when the Legislature provides for taking a deposition the Legislature will provide that the prisoner must be present and have the right to cross-examine. If he is in custody he must be brought there by an officer; if he is not in custody, but on bail, he must be notified, and his attorney notified and required to be there for the purpose of taking his deposition. So that I think those two provisions will go well together. This provision about taking a deposition on the part of the prosecution is a new one in a bill of rights, but still it is very unjust to a witness to confine him in jail with fifteen or twenty convicts for six months, as has been done in this Territory in one or two instances, when there might be some provision or law by which his deposition could be taken. The defendant would have the right to be present and cross-examine him, and the individual liberty of the citizen would be preserved in that way

Mr. Burleigh, of Custer Mr Chairman, I admit that this is an invasion upon the old rule, but since my residence in Montana I have seen so many cases of extreme hardship under the law as it now exists on our statute book, in taking poor and indigent persons and thrusting them into jail, and keeping them there six months at a time, and at an expense to the county, that I believe this provision has both justice and merit in it; and in view of the fact that when a deposition is taken there will be some provision made for the accused to confront the witnesses against him face to face, have all the advantages of cross-examination which he could have if present at the trial of the case in court, I do not think there is any extreme hardship in it; and it seems to me that if there is a hardship at all that it should be borne by the defendant in this case. It certainly would be a great matter of economy, and it would save the incarceration of witnesses who have committed no crime, and who are consigned to cells, in some instances with felons—for there have been cases here where the penitentiaries were so crowed that the felons were kept in the county jails, and I have known where witnesses have been kept in jail in Custer county, with felons, where there was no provision for taking their depositions—and I think the provision is a wise one under the circumstances.

Mr. J. K. Toole, of Lewis & Clarke: Mr. Chairman, I move to strike out that section—Section 16, or 17 as it will be re-numbered.

The motion was seconded.

Mr. J. K. Toole· Mr. Chairman, when this matter was considered before, it seemed to me that it was a proper provision, but upon reflection I am very much inclined to go with the gentleman from Deer Lodge. I believe that this right to meet the witnesses face to face, to be confronted with the witnesses against him, is a sacred right of the defendant, and that its importance cannot be overestimated. It may be true, sir, that the construction given to it by the gentleman—by meeting the witnesses and having the privilege and opportunity to cross-examine —may be construed to be meeting the witnesses against him face to face, but, sir, there is more involved in that proposition than the mere fact of meeting the witnesses face to face. The defendant, when he is upon trial, charged with crime, is entitled to have the witness brought face to face—to be confronted with him—in order that the jury charged to consider and determine the offense may look into his face and see whether he is testifying truthfully or not. It is not the mere statement, or the language which the party uses that entitles the witness to credence, but it is his hesitation—his halting—the very picture of perjury sometimes depicted upon his countenance—that stamps a witness frequently as a perjurer; so that I say that the constitutional provision guaranteeing to an individual the right to meet the witness face to face and to be confronted with the witnesses against him ought to be broad enough and comprehensive enough in its signification to require that that witness shall appear before the court and before the jury, in order that those who are the only judges of the credibility of the witness may be able to see his manner—his deportment—the feeling, if any, which he manifests in giving his testimony. It is true that it will save some cost and some expense, which in some instances would be a great hardship upon counties, or, possibly, upon the State, but I believe that the great benefit resulting to the defendant himself, to the people who are interested in seeing that there shall be a free, fair and impartial trial—the benefits that will accrue in the interests of justice will more than compensate for any matter of expense.

Mr. Luce, of Gallatin: It may be advantageous to the accused person to have the jury before whom the case is tried to look the witness in the face; but the old Constitution says that the witness shall meet the accused face to face, and I do not know of any provision that the jury shall. Now then, I would undertake to say that if I were over here on Mount Helena, and were a stranger, and should be so unfortunate as to go down on Main street and witness one of these affrays that sometimes happen here in this town, and a party should be killed in that affray, and I were unable to give security for my appearance in court, it would be a great hardship for me to have to go to jail and be incarcerated, as has been said here, with felons, until such time as the court might get ready to try the case. Now, if a speedy trial could always be assured, and the case would be tried the first term, there might not be much hardship in it; but you know that these cases are continued from day to day and from term to term. And, sir, would it not work detrimentally to the criminal jurisprudence of this State in this way: that if the witnesses themselves think that they will be incarcerated if they give up the knowledge that they know something about a criminal case, why I undertake to say that there are men who are not so patriotic and not so much imbued with the idea of the expression of General Grant on one occasion—"Let no guilty man escape"—but what they will dodge the issue and never let the community know that they have any knowledge about a case; and I am inclined to believe that no better provision than this that we have already passed upon can be had. It sometimes happens that a very good man a long ways from home, leaving a family dependent upon his support, may be so unfortunate as to be a witness to some criminal act—may be confined, as I say, from six months to two years in jail, in order that he may be a witness on the trial, and when the trial comes on the fellow that is accused gets clear and this man has been punished, and held for two years. It strikes me there should be some little innovation upon the wisdom of our fathers. All of these matters grew up in times, it is true, when there were great abuses, and all this progress towards liberty and freedom and fair trials and everything of that kind grew out of the times of oppression and great need: but it seems to me that we have passed that day and are now in such a situation that we can safely trust to the taking of depositions in these cases, and that the old common law idea that the accused should see the face of the witness against him will be subserved when he sees the face of the witness against him in taking his deposition. I understand that this has been adopted in other states, and that it is not a new proposition here in the Territory of Montana; and I, for one, hope that this provision will not be disturbed. You need never go to the expense of keeping your witnesses in jail longer than is necessary to take their depositions, to say nothing about the liberties of your people. You are keeping dozens of men in prison in order that they may appear against some man that is accused, and, as I said before, the accused goes free and the witness is punished for the time he is compelled to stay in jail.

Mr. J. K. Toole, of Deer Lodge: Mr. Chairman, while I am inclined to leave the discussion of these matters to the gentlemen here who are familiar with propositions of law, yet in this argument made on both sides there are a few ideas that suggest themselves to me. One of these is, that if you allow this section to stand as provided here, I take it you will find that there will be a great deal more of this deposition business than is anticipated. When it is the rule—it is the usual thing that a man who is a creditable, honorable and honest man in any community is usually able to procure sufficient bond to guarantee his appearance in any case that might come under this provision; but if you allow this section to stand as it reads now, there are a great many men who won't exert themselves to secure those bonds, knowing that if they even assert they cannot secure the bonds they can get out of it by having their depositions taken; and there are a great many people who would be reluctant to get people to go on their bonds, knowing that this provision is in the Constitution whereby, if they cannot procure bonds, they can have their depositions taken and so escape any further trouble; and the very class of men whose depositions would be taken under these provisions are the very class of people that the jury and the judge should meet face to face in the court room, because they are usually people without any character, without any standing in society, and usually people who would be apt to prevaricate. For this reason I heartily concur with the gentleman from Lewis & Clarke that it is well to strike it out, and not retain it in the Constitution.

Mr. Goddard, of Yellowstone: I agree with the gentleman who has just taken his seat, as well as the gentleman from Lewis & Clarke and the gentleman from Deer Lodge, that this section should be stricken from the Constitution, and upon the ground that it is unconstitutional—upon the ground that it is in conflict with the Constitution of the United States in that respect. The sixth amendment to the Constitution of the United States provides that the defendant shall be confronted with the witnesses against him, and have compulsory process, etc. That section does not mean that the defendant shall be confronted by the witness upon the taking of a deposition but upon the trial; and as has been aptly said by the gentleman from Lewis & Clarke, it is for the very purpose that when a witness goes upon the witness stand to testify against a person accused of a crime the jury may have the opportunity of observing the deportment, the character and the manner in which the witness testifies before them; the reasonableness or unreasonableness of his story; the manner—whether he hesitates—whether he is a willing or unwilling witness, as the case may be; and I believe, with the gentleman who has just taken his seat, that the majority—and, in fact, a large majority of the witnesses who are compelled to give bonds under these circumstances are of such a character as should be placed under the scrutiny of a jury of twelve men, upon the trial of the case. As a matter of course this may be abused in some cases. I know that in my county there was a witness confined in the jail there for a period of about nine or ten months awaiting the trial for which he was held, and it so happened that the defendant in the meantime died, and thereby beat the case. Nevertheless, I happened to know at the time that that witness was not a material witness in the case, but the Justice of the Peace who held the defendant to answer to the charge before the grand jury took another view of the matter, and I was prosecuting attorney at the time. He was held to appear before the district court, and he was not a material witness in the case When the session of the district court came around, the defendant, by some hook or crook, got a continuance of the case until the next term. Before the next term, as I say, he died. The testimony of that witness would have been absolutely worthless upon the trial of that case. And I say that, while it may work a hardship in some cases, I do not believe it is in accord with the Constitution of the United States—in Article 6 of the Amendments to the Constitution of the United States—which I have just referred to. And for that reason, and the reason that the defendant is bound to be confronted by the witness upon the trial of the case which takes place in a court, before a jury of his peers, and not upon the taking of a deposition, I am in favor of striking out the provision. It is very frequently the case that where a deposition is read in court, without having the opportunity to observe the demeanor of the witness, the manner in which he testified, that it reads well, and upon its face looks as though he was telling the truth and the whole truth; but when the same witness would be subject to the scrutiny of a jury and a court, and put upon a cross-examination upon the trial, it would be apparent that the witness was fabricating his story from beginning to end; and I am not in favor of permitting the provision to remain in the Constitution, but am in favor of striking it out.

Mr. Carpenter, of Lewis & Clarke: Mr. Chairman, I do not understand that this Article 6 in the Constitution of the United States applies in any way to prosecutions for state offenses; it only applies to proceedings in the federal courts, the same as Article 5 of the Constitution of the United States, which says "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentation or indictment of a grand jury." That has already been passed upon by this Convention. But none of these sections of the Constitution of the United States apply except where a limitation is placed upon the State itself to make the law. Now, in regard to this particular question, I think it has been ruled in several states, where an examination was had before a committing magistrate or coroner, or justice of the peace, for instance, and that testimony is certified to by the magistrate, that it was admissible in testimony in case of the absence or death of the witness who testified, provided the testimony was given in the presence of the accused. It seems to me that this is a very proper provision in our Constitution, though, of course, left to the Legislature to carry into effect as it will. The very great hardships imposed upon witnesses in so many cases by reason of being imprisoned because they happen to be deserving, worthy, poor men, but still away from friends who could give the bail required, is sufficient argument in itself in favor of the retention of the clause in the Constitution. It seems to me the injustice arising from a failure to convict a prisoner on account of such testimony would not be a drop in the bucket to the innocent man who would be imprisoned without cause and whose deposition could not be taken unless upon the trial.

Mr. Joy, of Park: I am in favor striking that provision from the Constitution for the reason suggested by the gentleman from Yellowstone, that the witness should be present in court and before the jury. There is not an attorney in the Territory who would not say to me that he would rather have one good witness than the deposition of three witnesses to bring in and read before a jury, and the judge always instructs the jury that they are to gather from the witness on the stand, his manner of testifying, his apparent fairness, his interest in the subject, his apparent intelligence or lack of intelligence, and from all other facts and circumstances surrounding the case and bearing upon the trial, whether or not the witness is worthy of credit, and that they shall give credit accordingly. I say that is the most important part of this proposition. There has been considerable talk about the hardship that comes of incarcerating these poor innocent persons in jail. I have been in the practice for seven years and I have never known of but one instance of persons being confined in a jail for the purpose of securing their testimony, and that was in Gallatin county some five or six years ago, and they were witnesses for the defendant, incarcerated at the instance of the defendant and I want to suggest to the people here who are figuring upon this proposition that there is no serious hardships about it; if a man is a stranger, if he has no means whatever—the bail is seldom more than two or three or four hundred dollars—but if he cannot deposit that, and is unable to furnish the requisite amount of bail, that man is generally in the habit of working day by day for his living, and if he does go to the county jail until the next term of court meets, he draws his pay, three dollars a day, and that is as much as he gets for working, and he is not confined in jail with a felon; I have never known such a case, and I do not believe a gentleman on this floor can cite one. When a man goes to jail for that purpose, charged with no crime whatever, but simply to wait there until the next term of court, I never knew of a sheriff in this Territory that would confine such a man in jail with a felon,—a man that had been sentenced to the penitentiary and retained in that jail for lack of room in the penitentiary I never knew such a man but had the utmost liberty about the jail, and, in the case of which I speak, they were out upon the street day after day and simply slept there at night, and when they did sleep there, they slept in the room that was provided for them apart from the prison cells entirely, and that was as good a room as I was sleeping in at that time, and perhaps ever will sleep in. I believe, as some of the gentlemen have said, that it is in the line of what we have already adopted. But this is another proposition, as I take it, this is to strike out one of the very safe-guards of the Constitution itself, that an accused person shall be confronted with the witness against him, face to face, in the court room; and in that way, and in that way only, can you secure the fullest rights to the person before a jury on trial for a crime. I hope that section will be stricken out.

Mr. Burleigh, of Custer: Now, Mr. Chairman, while I dislike, very much, to consume the valuable time of this Committee, I think that my friend is a good deal in the condition that the prophet told King Saul he was,—he has become so much interested in this case that he is liable to the accusation that the zeal of his house hath eaten him up. Now, I have known, in Custer county, within the last three or four years, cases where men were held as witnesses, were unable to give the necessary bail for their appearance in court, and were incarcerated in the county jail with felons. That was when the penitentiary at Deer Lodge was so overloaded that they were compelled to employ the authorities of Custer county to keep their felons in that jail. Now, in regard to this hardship that scarcely ever occurs, it occurs to me that it was not very many years ago that a man was traveling through on one of these railroads with his family, to seek his home in the West; he happened to get out at a station, and there he witnessed a murderous assault by one man upon another. He was detained. He had a wife and six little children, and they were going through to Washington. He was compelled to take his family off from the train, and was kept there, and instead of being kept there at three dollars per day, all they were allowed was two dollars a day. If the gentleman will look at the Compiled Statutes, page 403, at Section 102, he will find two dollars a day prescribed by statute. Now, what has occurred may occur again, and it is an abominable hardship to take a man from his home simply because he is a laboring man, and to lock him up in the county jail week after week and month after month to testify in a criminal case, when all the purposes of justice could be answered as well by taking him before a magistrate, in the presence of the state's attorney, or the county attorney, and in the presence of the attorney for the accused, and there take his deposition in the solemn manner, under the security guaranteed by a rigid cross-examination I have known cases where women were deprived of their liberty in this way. Of course, in the humane county of Park, it may not occur—up in the county of Park, where the Sheriff does not discharge his duty according to the letter of the law, and lets prisoners of this character run at large. But I am now speaking of a county where the law is administered by its officers, and I am speaking of the hardship under the administration of the law as known to the statutes of the Territory. I hope that clause will not be stricken out I believe that the same justice can be secured to the State and the defendant under the honest administration of that law as under any other, and that every constitutional guarantee will be secured to the accused, and much will be saved to the commonwealth by enacting this as it stands in the report of the Committee.

Mr. Knowles, of Silver Bow: As has been said by the gentleman from Lewis & Clarke, (Mr. Carpenter), this prohibition or limitation, as found in the amendment to the Constitution, is only a limitation upon the power of the general government; it is a limitation that does not affect the states; and, as is further said, this matter of meeting a witness face to face, it has been held by the courts that where a witness had appeared upon a preliminary examination, and upon cross-examination there by the defendant, and had died or departed from the State, that his deposition taken on the preliminary examination could be introduced in evidence, that that was confronting the defendant face to face. In regard to this matter of having a witness upon the stand, the gentlemen seem to put it all upon the ground that it is necessary in order that they may show that the party is not a prejudiced witness, or something of that kind. Now it is well known, as the gentlemen say here that a deposition does not have the same force and effect as the examination of a witness before a jury, and if there is anybody to be damaged in taking his deposition and having that testimony introduced, I think it is the prosecution and not the defense The defendant can have every opportunity for cross examining the witness. Now, in order that this theory may be carried out by the gentlemen we turn in and deprive a man of his liberty. That is usually only for the punishment of criminals It is a right that is sacred If any man deprives another of his liberty he is generally, under the laws of every state, considered to be guilty of a felony, and here they propose to do this thing in order that a man may be a witness, and that he may appear at the trial, and it is just the same whether he is an immaterial witness or a very material one, he is held there just the same. The gentlemen seem to have a sort of hostility to a man who is found in this country that cannot produce four or five hundred dollars. Now there are a good many of us in this country that were strangers in times past, and even if we were pretty well known we could not have produced two, or three, or four hundred dollars.

Mr. Joy, of Park: Then you would have been willing to work at three dollars a day and get some money, wouldn't you Judge?

Mr. Knowles, of Silver Bow .Not in jail, No Sir. I never wanted any employment there You must remember that this is a new country, that people are coming here and are coming here with a view of making their homes, and a great many of them have very little money, and it will be very difficult for them to raise this money. I know a case where a young fellow over here in Deer Lodge county was sent to jail. Here he was a good, hard working young Swede, an honest young fellow: but nobody knew him well enough to go on his bond. And now there is a good deal to be said about this thing in another way—just as has been said here about people traveling Now I know of a case where Jack Demers, who died here recently, was in Chicago and was robbed there, and he went to some of his friends about trying to do something, and they said that if he made any fuss about the matter, why, it would cost him a good deal; they said "the magistrate will bind you over under very heavy bonds, or you will have to go to jail, and unless you have got friends enough here in Chicago to give these bonds, why you will have to go there and communicate with your friends in Montana; and if you do give bonds and go back to Montana, you will have to come back here for the trial of the case, and when you get here the other party wont be ready for trial." So Jack put his hands in his pocket, and went down and bought his railroad ticket and started for home, and said nothing about it. Robbed in broad daylight, and yet he packed up and quit, and did not stay there, because he could not afford to be a witness There are a great many cases like that, where men have just kept their mouths shut; and certainly, if I was a stranger, and knew anything about it, I do not care how great a crime, I would just keep my mouth shut. Now I can't conceive that this is a great hardship. I certainly am as lenient towards criminals, I think, as any attorney in the Territory. I want them to be confronted by the witnesses; and it is only, remember, when these witnesses are out of the Territory, when they cannot be brought into the court on a subpoena, that these depositions are to be read—when they are dead or out of the Territory so that they cannot be brought in, then their depositions can be used. Now those are the only cases, and it will not be many cases, even where men are let out on bond, that they will not be here in the country. But the other rule is getting to be quite common; it didn't used to be that way; but now it is getting quite common for a prosecuting officer to ask that the witnesses all give bonds to appear before the grand jury, so that those that cannot give bonds, why, pack them away to the jail. And it may be that they have a great many liberties about the jail; but while they are in jail, a place where it is a disgrace for a man to be; that is one of the facts about it, and there is not any man of fine feelings, any man of character, any man that has a proper regard for the fitness of things, that wants to be confined in a jail. And these things are worthy of consideration. Look not so much at the confronting part of it—having a man before a jury to be cross-examined by the defendant, but look at the witness that is there and subjected to this sort of punishment; look at him and consider his condition awhile; and it seems to me, under these circumstances, we will conclude that it is proper very often that a deposition should be taken.

Mr. Marshall, of Missoula: Mr. Chairman, I have been forty-seven years a practicing lawyeer. I never saw a witness confined in jail simply because he was a witness in my life. I never knew any law before that authorized it. In Kentucky, where I have practiced, witnesses are always released upon their own recognizance: If a witness fails to attend upon a subpoena, or in obedience to his recognizance, he is guilty of a contempt of court, and he is then put in jail and required to give bond, with security, for his appearance. And I will say that it does seem to me actually horrible, the idea of putting a perfectly innocent man in jail, not accused of any crime, and kept in there for months, maybe, because he is a poor man, unable to give bail for his appearance; and afterwards it turns out that there was no offense committed at all; and it does seem to me that if there is any way of avoiding that thing we ought to fix it up now; certainly, instead of keeping the witness in jail, let us let him give his deposition, if it is competent, and I am inclined to think it has been so held by courts, where the defendant was present and had an opportunity to cross-examine before the magistrate who took his deposition, that that was a compliance with the law which said that he had a right to be confronted face to face. I know that it has been held by some of the courts; but even if that is not so, do not let us fix a plan by which innocent people can be held in jail. Let us try it anyhow. We are not a court, and let us fix it so that we can let them give their depositions and go. I am not in favor of striking this out. I believe I would vote to amend it so that no witness should ever be imprisoned as a mere witness, but if we provide that his deposition may be taken, and after that he may be released, it seems to me that that is sufficient, and I shall vote for the proposition as it now stands in the Bill of Rights.

The Chair put the motion, and the same was declared lost.

Mr. Dixon, of Silver Bow, sent up an amendment.

The Chairman: The gentleman from Silver Bow moves to amend Section 16 by adding thereto the following, "and in the presence of the accused and his counsel."

The motion was seconded.

The Chair put the motion, and the same was declared carried.

Mr. J. K. Toole, of Lewis & Clarke: Mr. Chairman, I move to amend the same section by inserting before the word "criminal," in the first line, the word "all," so that it will read that "in all criminal prosecutions," Then it will conform to the language used in the amendment to the Constitution of the United States.

The motion was seconded.

The Chairman put the motion, and the same was declared carried.

Mr. Eaton, of Park: Mr. Chairman, I move that the Committee do now arise and report back to the Convention the action taken, with the recommendation that it be adopted by the Convention.

The motion was seconded

The Chairman put the motion, and the same was declared carried.

IN CONVENTION

Convention called to order by the President.

The President: We will hear the report of the Chairman of the Committee of the Whole.

Mr Callaway, of Madison: The Committee of the Whole have directed me to report in Convention that they have had under consideration Article on Preamble and Bill of Rights, and report the same back with the recommendation that it do pass as amended. I would ask of the Convention a little time, say until to-morrow morning, to report fully.

The President: If there be no objection the report of the Chairman of the Committe of the Whole will be received, and the gentleman from Madison be granted reasonable time in which to make his report.

Mr. Eaton, of Park: Mr Chairman, I move that we go into Committee of the Whole for the purpose of considering the report of the Committee on Military Affairs.

The motion was seconded.

The President: It is moved and seconded that the Convention do now resolve itself into a Committee of the Whole for the consideration of General File No. 2, on Military Affairs.

The motion was put, and declared carried

The President: I will appoint the gentleman from Cascade, Mr. Collins, Chairman of the Committee of the Whole.

IN COMMITTEE OF THE WHOLE

Mr. Collins, of Cascade, in the Chair.

The Committee was called to order by the Chairman.

The Chairman: We have for our consideration General File No. 2, report of the Committee on Military Affairs.

The Clerk read Section 1 as follows:

"Section 1. The militia of the State of Montana shall consist of all able-bodied male citizens of the State between the ages of eighteen (18) and forty-five (45) years inclusive, except such persons as may be exempted by the laws of the State, or of the United States."

Mr. Marion, of Missoula, sent up an amendment.

The Chairman. The gentleman from Missoula moves to amend by striking out the word "citizens," in line 1 of Section 1, and inserting in lieu thereof the word "residents"

The motion was seconded.

Mr. Marion, of Missoula: Mr. Chairman, my objection is simply this. It seems to me that it is unfair to each and every citizen between the age of eighteen and forty-five to be called upon in case of necessity and to leave those men who come here from foreign countries, accumulate wealth here, and claim protection from our government, that they should be left aside and should not be compelled, as well as a citizen, to help defend the country. That is the only reason why I offer the amendment, and I hope it will prevail.

Mr. Knowles, of Silver Bow: Mr. Chairman, I doubt whether we can do that. I do not think we can make every resident of the Territory perform military duty here. I think, if we should attempt to do that, and impress the citizens of a foreign country, that they could claim the same duty from us, and I am opposed, under those circumstances, to making every resident responsible for military duty. We have residents ourselves in foreign countries that are doing business in England and in France, in South America and in China; and we would not want to establish the rule that those governments should call upon them to perform military duty. I think this might be amended so as to read, "residents who are citizens, or who have declared their intention of becoming such." That might be done But to say that all residents in the Territory shall be subject to military duty in the State, I doubt our power to compel that, and I should be opposed to it.

Mr. Marion, of Missoula: If you will allow me, I will read from the Constitution of Colorado, where it says, in Section 1, that the militia of the State shall consist of every able-bodied male resident of the State between the ages of eighteen and forty-five years, except such persons as may be exempt by the laws of the United States, or of the State.

Mr. Clark, of Silver Bow: Mr. Chairman, I do not know what that exemption comprises or comprehends. I am not familiar enough with the laws of the United States to know whether that exempts residents or citizens of foreign countries or not; but, if not, it certainly would be a very unjust provision to adopt in the Constitution of this State. Let us take it home to ourselves. Suppose any of us should be traveling abroad, in foreign countries, and be subject to military duty at the caprice of some recruiting officer, and pressed into service; we would consider it an abridgment of our rights as American citizens, and no doubt our Government would be called upon to protect us. Now we should accord the same rights to people of other countries that we expect to be accorded us, and it certainly would be a very unjust provision, unless this provision which the gentleman quotes is comprehensive enough to exclude the residents or citizens of foreign countries.

Mr. Craven, of Lewis & Clarke: Mr. Chairman, granting that we have the power to make all residents between these ages subject to military duty, whether citizens or not, I doubt very much the practicability of including them. If a resident of this State is not sufficiently interested in the affairs of this State and government to become a citizen, or to declare his intention of becoming a citizen, we do not want him in the militia. There may emergencies arise where the loyalty of the troops would be very much involved, and where the citizens of the State would be the most reliable, and upon them alone we should depend and on that account I think we had better leave it as it stands.

The Chair put the question, and the amendment was declared lost.

The Clerk read Section 2, as follows:

"Sec. 2. The Legislative Assembly shall provide by law for the organization, equipment and discipline of the militia, and shall make rules and regulations for the government of the same. The organization shall conform as nearly as practicable to the regulations for the government of the armies of the United States."

There being no amendments to Section 2, the Clerk read Section 3, as follows:

"Sec. 3. The Legislative Assembly shall provide by law for maintaining the militia by appropriations from the treasury of the State."

There being no amendments to Section 3, the Clerk read Section 4, as follows:

"Sec. 4. The Legislative Assembly shall provide by law for the safe keeping of the public arms, military records, relics and banners of the State."

There being no amendments to Section 4, the Clerk read Section 5, as follows:

"Sec. 5. When the governor shall, with the consent of the Legislative Assembly, be out of the State in time of war at the head of any military force thereof, he shall continue commander-in-chief of all the military forces of the State."

There were no amendments to Section 5.

Mr. J. K. Toole, of Lewis & Clarke: Mr. Chairman, I move that the Committee arise and report the Article back, with the amendments with the recommendation that it be adopted by the Convention.

The motion was duly seconded.

The Chairman put the motion, and the same was declared carried.

IN CONVENTION

President Clark in the Chair.

The Convention was called to order.

The President: We will hear the report of the Chairman of the Committee of the Whole on General File No. 2.

Mr. Collins, of Cascade: Mr. President, your Committee of the Whole direct me to report that it has had under consideration General File No. 2, and that the same is returned to the Convention with the recommendation that it do pass.

The President: If there be no objection, the report of the Committee of the Whole will be received.

Mr. J. K. Toole, of Lewis & Clarke. Mr. President, if the Chairman of the Committee on Boundaries is ready to consider that Article, I believe it might be disposed of without debate. I therefore move that the Convention resolve itself into a Committee of the Whole for the consideration of Proposition No. 13.

The motion was seconded.

The President: It is moved that the rules be suspended, and that the Convention resolve itself into a Committee of the Whole for the consideration of Proposition No. 13.

The President put the motion, and the same was declared carried.

The President called Mr J. K. Toole, of Lewis & Clarke, to the Chair.

IN COMMITTEE OF THE WHOLE

Mr. J. K. Toole, of Lewis & Clark, in the Chair.

The Committee was called to order.

The Chairman: The matter pending before the Committee of the Whole is Proposition No. 13, Article 1, on Boundaries, introduced by Committee No. 20, on Boundaries, General File No. 11.

The Clerk read Section 1, as follows:

"Section 1. The boundaries of the State of Montana shall be as follows, to-wit: Beginning at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude, thence due west on the forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington, thence due south along the thirty-fourth degree of longitude, to a point formed by its intersection with the crest of the Rocky Mountains, thence following the crest of the Rocky Mountains northward to its intersection with the Bitter Root Mountains, thence northward along the crest of the Bitter Root Mountains, to its intersection with the thirty-ninth degree of longitude west from Washington; thence along the thirty-ninth degree of longitude northward to the boundary line of the British possessions; thence eastward along that boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along the twenty-seventh degree of longitude to the place of beginning."

The Chairman: If there be no amendments, the Section will be considered adopted.

Mr. Hickman, of Madison: Mr Chairman, I move that when the Committee arise the Chair be instructed to report Proposition No. 13 back, with the recommendation that it be adopted.

Mr. Muth, of Lewis & Clarke: Mr. Chairman, I move that we take up General File No. 3, Proposition No. 5.

Mr. Collins, of Cascade: That is the Article on Education, and I hope that that will not be taken up in the absence of the Chairman of the Committee.

Mr. Muth, of Lewis & Clarke: Mr. Chairman, I move that we take up Proposition No. 11, General File No. 6

Mr. Warren, of Silver Bow: Mr. Chairman, in view of the fact that that proposition is reported by the Committee on Labor, and I understand that there was a minority report, or some of the members of the Committee who did not sign that report, I think we ought to give time in which to prepare a minority report, if necessary, and I think it would be well to pass that for the present and find out if there is any desire on the part of the Committee to make a minority report.

Mr. Witter, of Deer Lodge: Mr. Chairman, the Committee on Labor is to have a meeting today, and I think they themselves want to make some alterations in the report that has already been handed in. I think it would be well to postpone that for the present.

Mr. Collins, of Cascade: I move to amend to place that proposition at the foot of the General File.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

Mr. Colline, of Cascade: I move that we take up the consideration of General File No. 7.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

The Chairman: Will the gentleman from Cascade kindly send to the Chair File No. 7.

Mr. Clark, of Silver Bow: Mr. Chairman, I would like to inquire if File No. 7 has been printed.

The Clerk announced that the proposition was reported adversely and not printed.

The Clerk then read as follows:

"Resolution No. 13, Restricting Appropriations by Legislative Assemblies, introduced by Rickards, July 11th, received, read and referred to Committee No. 3, on Legislative Departments: July 15th, reported back adversely, and placed on General File No. 7." Resolved, that the Legislative Assembly shall have no power to make an appropriation for any purpose whatever for a longer period than two years.

Mr. Collins, of Cascade: I move the adoption of the report of the Committee, and that the matter be stricken from the General File.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

Mr. Collins, of Cascade: I move that General File No. 8 be taken up.

The motion was seconded.

The Chair put the question, and the same was declared carried.

The Clerk read as follows: "Resolution No. 12, introduced by Allan R. Joy, relating to Suffrage. July 10th, received, read and referred to Committee No. 2, on Rights of Suffrage. July 16th, reported back with the recommendation that it do not pass, and placed on General File No. 8."

Resolution on Suffrage. Every male citizen of the United States above the age of Twenty-one years, who can read and write the English language, and who has never been convicted of treason or felony, and who shall have resided in this State one year, and in the city, county or district wherein he may offer to vote for six months next prior to any election, and no other person, shall have the right to vote in this State, provided, that nothing herein shall disfranchise any person who was a qualified voter at the time of the adoption of this Constitution.

Mr. Warren, of Silver Bow: Mr. Chairman, I move the adoption of the Resolution and the rejection of the report of the Committee.

The motion was seconded.

The Chair stated the motion.

Mr. Robinson, of Deer Lodge: Mr. Chairman, I call for a division of the matter involved in the Resolution.

Mr. Warren, of Silver Bow: Then I make the motion that the report of the Committee be rejected.

Mr. Clark, of Silver Bow: Mr. Chairman, if we adopt the Resolution, we reject the report of the Committee, and therefore it is not necessary to make both motions.

The Chairman: I take it that the proper thing to be consdered would be the adoption of the Resolution. If that is adopted it would be in effect a rejection of the report of the Committee.

The Clerk read the Resolution.

The Chairman: The question is upon the adoption of the Resolution.

Mr. Goddard, of Yellowstone: I move to amend the proposition by striking out the words "six months" and inserting "thirty days in the district." etc.

The motion was seconded.

Mr. Cardwell, of Jefferson asked that the report of the Committee be read for the information of the Committee.

Mr. Collins, of Cascade: I arise to a point of order. We see the inconsistency of placing a matter of this kind on the General File, if anything has the very highest order of precedence it is the report of a Committee of this Convention. The report of the Committee of the Convention upon this subject has been filed, and so has this adverse report. Now, sir, my idea in bringing this up was to strike it from the file. This particular amendment, and a thousand others can be offered, but certainly the Committee will not allow the resolution of any member of the Committee to take precedence of the report of the Committee itself; so that it seems to me that those extraneous matters on this file should be stricken off, and that when we are ready to take up the report of this Committee, these matters can all come up in their proper form.

The Chairman: It is the opinion of the Chair that there is no authority in Committee of the Whole to strike from the General Files any matter that has been placed there by the order of the Convention.

Mr. Robinson, of Deer Lodge: I endorse the views of the gentleman from Cascade on that proposition. The proper way to consider the matter is to consider the report of the Committee, as suggested; the proper way now would be to defer the consideration of this until we consider the report of the Committee, as suggested by the gentleman from Cascade, and I move now, that this Committee defer the consideration of this proposition until the other is considered.

Mr Callaway, of Madison: At the time of the taking up of the consideration of the first resolution that has been rejected, I spoke to the gentleman from Cascade as to the propriety of this proceeding in this Committee. I have some little recollection, but not much, of these matters. It would seem to me that if we are going to discuss that resolution or proposition that is offered here, reject it or otherwise, we will never get through. The only way is to take up on the General File the propositions that have been returned and approved and printed, and to be incorporated as part of the Constitution. Now, sir, at the time of the taking up of any proposition on the General File, or by a committee recommended to the Convention, any gentleman may offer a resolution at that time, and any one has a right to offer an amendment, and the whole should come up together and I submit respectfully that this Committee should consider nothing else except some proposition that has been recommended favorably by a Committee.

Mr Joy, of Park., Mr Chairman, I second the amendment of the gentleman from Yellowstone, and would like to have that question put.

The Chairman What was the motion of the gentleman from Yellowstone that was seconded?

Mr. Joy, of Park: Changing the time of residence.

Mr. Collins, of Cascade: My idea is that the report of the Committee be adopted and General File No. 8 be stricken from the file. and I make that motion.

The motion was seconded.

The Chairman: It is moved and seconded that when the Committee arise it report back the subject under consideration with the recommendation that the report of the Committee be adopted, and that the resolution be stricken from the General File.

The Chairman put the question, and a division being called for, the motion was declared carried by a vote of 30 to 15.

Mr Collins, of Cascade: Now, Mr. Chairman, I move that when the Committee arise it report to the Convention, and recommend that all resolutions and matters upon the General Files which are not in the nature of a proposition be stricken from the General File.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

The Chairman The Clerk has called the attention of the Chair to the fact that there are some resolutions here that have been printed and are on the General File, and wishes to know whether it is intended to include these.

Mr. Collins of Cascade: Certainly, they can be brought up at any time; they have no business on the General File.

The Chair put the motion in the amended form, and the same was declared carried.

The Chairman: I will call the attention of the gentleman from Cascade to Rule No. 23, which provides that "all propositions and resolutions embracing matters proposed to be incorporated in the Constitution, reported by a standing or special committee, shall be read when reported, and if reported favorably such propositions or resolutions shall be ordered printed, otherwise the printing thereof shall be within the discretion of the Convention, and thereupon the same shall be placed on the General File to be kept by the Clerk, in the order in which they are reported."

Mr. Clark, of Silver Bow: Mr. Chairman, I would like to know what that motion embraces. As I understand it, it is to strike off from the file anything not in the nature of a proposition or resolution. Now who is to determine the character of those resolutions already filed, as to whether they contain matter to be embraced in the Constitution? There are a number of them now on file, I understand.

The Chairman: I take it that the President of the Convention should do that, subject to an appeal to the Convention in cases of doubt.

Mr. Clark, of Silver Bow: The question would be upon determining the character of those propositions, whether they were propositions containing matter to be embraced in the Constitution.

The Chairman: The motion which was just adopted, whether desirable or not, is clearly in conflict with the rule that has just been read.

Mr. Goddard, of Yellowstone: I move that we reconsider the proposition that has just been put to the house and carried.

The motion was seconded.

The Chairman: It is moved and seconded that the vote by which it was determined to report to the Convention to strike from the file all resolutions, etc., shall be reconsidered.

Mr. Collins, of Cascade: Mr. Chairman, I hope that will not be reconsidered. We should have on the General File only reports of committees; if we have anything else upon the File, then the proposition embraced in a resolution may embrace the exact propositions that are in the report of a committee, and thus may be reported upon, or may be acted upon, by the Committee of the Whole before the report of the committee. Now certainly, it seems to be entirely right that the report of the committee should have precedence, and that the weight of its investigations and of its researches should have some consideration in this body. The General File, as I understand it, should be exclusively the report of the committee upon propositions which are to be embodied in the Constitution, and if we add anything else to it it will make the business of the Committee of the Whole very much disjointed and out of order, because we may take up a resolution which provides that a certain thing shall be embodied in the Constitution in a certain way, and possibly pass it, and afterwards take up the report of a committee upon that same particular thing which is different in wording and different, probably, in policy, and we cannot give that due regard to it and to their labor upon it that we should do after having considered it in Committee of the Whole. Now a committee of this house, it seems to me, should not report to the Convention, and the Convention should not authorize a Committee of the Whole to act upon any proposition at all, except something which is reported favorably by a committee: that is what the Committee of the Whole is organized for, and that is the object and purpose of the Committee of the Whole, that is, to fix up, amend and improve propositions that have passed through committees, and that have been introduced by members and have come before it in the usual way. Certainly it is not the object of the Committee of the Whole that it shall act primarily upon a proposition of a member, and it should not be placed upon the File. The proposition of a member should be acted upon by a committee, and the committee should report upon it; but in acting upon it, the Committee of the Whole should act upon that particular matter in connection with the report made by its own committee If you take up any matter embraced in a resolution, certainly you should take up the committee's report in reference to that particular thing. But it is not fair—it is not in accordance with parlamentary regulations—it is not fair to the committee who have investigated this matter that you should take up a subject matter that has been reported by a committee and not give the time and opportunity to be heard in Committee of the Whole. It seems to me that the intention of the rule is that nothing should be taken up by the Committee of the Whole except matters acted upon by a committee of this body and intended to be embodied in the Constitution. Now I see there is a proposition here—No. 4. The minority report is to be presented, or has been presented; that will come up in its order; it should come up in Committee of the Whole in connection with the report of the Committee. The Committee on Suffrage have reported, and they have also reported an adverse resolution. Now this resolution should not be taken up unless you take up the report of the Committee on Suffrage; and my idea is that this Committee should instruct the Convention that a resolution and a report directly opposed to one another having been considered in Committee, should not be placed upon the General File. It has been referred to the Committee on Towns and Counties, now the Committee on Towns and Counties have not reported yet, they have not yet completed their labors. It would not be fair to that Committee to take up that report, because we would not then have the advice and benefit of their labors in the matter before them. It is the same way with Resolution No. 9. That particular matter has been reported adversely by the committee, but the committee may yet put in something that may cover that case in their report to be hereafter introduced. So that it would not be right, nor would it be in accordance with good business regulations, to bring that up in Committee of the Whole.

The Chairman: If the gentleman from Cascade will allow me for a moment, would it not be a good way in which to get out of the difficulty to move that when the Committee arise that it report the resolution back, with the recommendation to the Convention that the same be considered in connection with the report of the committee?

Mr. Collins, of Cascade: My idea is that it should be considered in connection with that, and that the adverse report should be placed in the report of the committee, and they should all be under a general head and under one number. I move that the Committee of the Whole make that recommendation.

The motion was seconded.

The Chairman. It is moved and seconded that when the Committee arise that it report back this resolution, with the recommendation that the same be considered in connection with the report of the Committee on Suffrage and Election

Mr. Clark, of Silver Bow: There is a question before the Committee; the question to reconsider is pending.

The Chair then put the question on the motion to reconsider, and the same was declared carried.

Mr. Clark, of Silver Bow: Mr. Chairman, I would also like to include in Mr. Collins' motion all these considered resolutions to be considered in Committee of the Whole in connection with the proposition to which they belong, or rather in connection with the reports of the committee to which they belong. That would simplify matters and avoid any more rambling discussion of this kind. I move that as an amendment

The amendment was seconded.

Mr. Durfee, of Deer Lodge: It seems to me this would do, with one exception. There is a report here in relation to school lands that was reported favorably by the Committee on Boundaries and Public Lands, and the Committee of the Whole has already passed on that report of the committee, and I do not see how it can be considered. This report of the Committee on Boundaries and Public Lands in relation to school lands cannot be considered in connection with that having been already passed upon.

Mr Clark, of Silver Bow: That would take it out of the provisions of my motion. If it is considered, of course it would not be reconsidered. My motion pertained to all matters coming up hereafter.

The Chair put the question on the amendment of the gentleman from Silver Bow, and the same was declared carried.

Mr Burleigh, of Custer: Mr. Chairman, I move that the Committee do now arise

The motion was seconded.

The Chair put the motion, and the same was declared carried.

IN CONVENTION

President Clark in the Chair.

The Convention was called to order.

Mr. J. K. Toole, of Lewis & Clarke: Mr. President, your Committee of the Whole have had under consideration sundry propositions, and have directed me to report back certain recommendations, which I will file later in a written report.

The President: If there be no objection, the report of the Chairman of the Committee of the Whole will be received.

Mr. Joy, of Park: I would like to ask leave of absence until Monday, at 3 o'clock.

The President: If there be no objection, the gentleman will be excused until Monday, at 3 p. m. I have also a note from the gentleman from Beaverhead (Mr. Knippenberg), in which he states he was obliged to leave, and asks to be excused until, Tuesday, at noon. If there be no objection, the gentleman will be excused.

Mr. Burleigh, of Custer: I move that the Convention do now adjourn.

The motion was seconded.

The Chair put the motion, and the same was declared carried, and the Convention stood adjourned until ten o'clock, a. m. on Saturday, July 20th, 1889.

Adjourned.

THIRTEENTH DAY.

Saturday, July 20th, 1889.

Convention called to order by the President at 10 a. m.

The Clerk called the roll.

The President: The gentleman from Choteau, Mr. Brown, desires to be excused until Monday afternoon. If there be no objection, leave of absence will be granted him.

The Chaplain offered prayer.

The Clerk read the Journal of the previous day.

Mr. Eaton, of Park: Mr. Chairman, I desire to present a petition, with the accompanying letter, by request.

The President: The petition offered by the gentleman from Park county, by request, will be read.

Mr. Eaton, of Park: Mr. President, I would suggest that, as the communication accompanying the petition seems to be very lengthy, that the postscript to the letter only need be read, as I did read that much of it myself, and presume that this communication, being more lengthy than the Convention would care to listen to, in anticipation of that I think he put in the postscript, which will furnish us some guidance for our action.

The President: If there be no objection, the communication will be read.

The Clerk read as follows:

Canandaigua, New York, July 11, 1889.

"To the Governors and Conventions of the coming new States:

We beg leave to commend to your favor the views of Professor E. Chadwick in regard to the christening of your noble States. Whilst brave pioneers are making these new States he watches, admires and suggests. We believe that the inspiring names he proposes will promote your glory, and gladden the hearts of all patriots."

Prof. Chadwick was born in New Hampshire before that ardent patriot Henry Wilson and near to him. Knowing all our states and territories from the Atlantic to the Pacific, his spirit is stirred within him when he sees so many of the old states named after kings and tyrants, and only one state proposed to be named for an illustrious American and champion for freedom:

(Signed by about twenty names.)

Mr. Kennedy, of Missoula: I move that further reading of the communication be dispensed with, and that it be laid on the table.

The President: The gentleman desired to have the postscript read.

The Clerk read:

"N. B. The Professor prays it may please the Hon. Governor, the Convention and your public spirited editors to publish this letter for the consideration of the **people**, as well as the Convention. Also the endorsement of Gov. Clark and the other eminent men who commend it."

Mr. Warren, of Silver Bow: Mr. President, I move that the communication be referred to Col. Searles, of the River Press.

Mr. Bickford, of Missoula: I move to amend, that it be referred to the Bitter Root Bugle.

Mr. J. K. Toole, of Lewis & Clarke: Mr. President, I understand there is a valuable letter accompanying that petition, which is full of information I move that it be read.

The motion was seconded.

The President: It is moved and seconded that the letter, supposed to contain valuable information, be read.

The Chair put the question, and the same was declared carried.

Mr. J. K. Toole, of Lewis & Clarke: The letter I refer to is a private one, and it is probably not in the hands of the Clerk.

Mr. Burleigh, of Custer: I am opposed to reading any private correspondence in this Convention.

Mr. Collins, of Cascade: Mr. President, the private letter is not among those papers.

Mr. Warren, of Silver Bow: Mr. President, I have read a part of the correspondence, the letter precedes the postscript.

Mr. Goddard, of Yellowstone: I have read the entire letter, and it is a very interesting communication.

The President: The Clerk will proceed to read the letter.

Mr. Kennedy, of Missoula: Mr. President, there was a motion to reconsider the vote.

Mr. President: Was the motion seconded?

Mr. Kennedy, of Missoula: Yes sir.

The President: The question now is upon the reconsideration of the vote by which the communication was ordered read.

The Chair put the motion, and the same was declared lost.

The Clerk read as follows:

"To the Governor and the Constitutional Convention of Montana.

"Honored Sirs:

"The great hour almost strikes for launching your magnificent State."

"Please permit humble fellow-citizen to make a few suggestions."

"1. According to national surveys and highest authorities, Montana is far **less mountainous** and elevated, on the average, than many other States and Territories of the great West."

"2. The mean elevation is only 3950 feet, whilst even the **Lakes** in the wonderful National Park are 7788 feet, or about **twice as high** as Montana."

"3. More than half of Montana is on a comparatively **low level.** Appleton's great Encyclopedia says "nearly three-fifth lie thus low"

"4. Not true to name, "or name not true to the facts, seems to be indelibly written upon the immense Territory of Montana!"

"6. This name is **misleading,** as it leads even the most intelligent people, if they do not investigate, to "believe a lie!"—that is, to believe that "Montana" is the name of the **most mountainous** region of North America!"

"7. Whilst "Montana" would thus be, for all time, a most **glaring misnomer,** another name most fit, true, and patriotic, invites your attention."

"8 This month of **July,** forever Synonymous with Freedom and Independence, almost thunders forth the right name.

"9. Great Washington, destined to stand, evermore, upon the grand northern frontier west of you, giving his name to a new state, re-echoes the thundering demand—"Place me not here alone! Station to the East of me my great Secretary of State! For him I waited 100 years ago.—On him I leaned Jefferson, that writer of the immortal Declaration.—That purchaser of your own immense territory, and of the many immense States stretching from the Gulf to the vast domain of Canada."—

"And Still louder Washington thunders—"Make your great State an imperishable monument to **Jefferson!** Thus prove to all ages, and to all nations, that the grandest Republic of the world is not ungrateful!"

"Franklin and the Adamses, with the whole army of departed patriots, would join with Washington in appeals from the heavens, saying—"Give not to that magnificent State the misleading name of "Montana." Give it the immortal, historic name of **Jefferson.**"

"11. Lincoln and all the martyrs for Liberty, have their blood crying from the ground, demanding the same thing. Not merely that we name a splendid State for the patriot who penned the Declaration, and who made the Lousiana purchase, but who also penned the ordinance of 1787 for great free territories northwest of the Ohio. The benign power of that ordinance secured a Free Northwest, and gave to our Great Republic the immortal patriots Lincoln, Grant, Sherman, Sheridan, the Harrisons—and universal Freedom!"

The reading of the foregoing was frequently interrupted with applause and laughter.

Mr. Collins of Cascade: Mr. President, I move that the further reading of the communication be dispensed with, and that the communication be referred to the Committee on Boundaries.

Mr. Burleigh, of Custer. I think it would be more appropriate to refer it to the Superintendent of the Insane Asylum.

Mr. Collins' motion was seconded.

Mr. Kennedy, of Missoula: I move to amend by striking out the words "refer it to the Committee on Boundaries."

The motion was seconded.

The President: The question now is upon dispensing with the further reading of the communication.

The Chair put the motion, and the same was declared carried.

Mr. Breen, of Jefferson, sent up the following reports:

The President: The reports of the Committee on Labor will be read.

The Clerk read as follows: "Mr. President: Your Committee on Labor have directed me to return Proposition No. 2 to the Convention, as the substance of it has been embodied in the report of the Committee on Labor.

(Signed) BREEN,
Chairman."

The Clerk announced that Proposition No. 2 referred to in the report of the Committee was the proposition introduced by Mr. Hogan, of Silver Bow, to prevent convict labor under contract. Received July 10th, and referred to Committee No. 23, on Labor.

The President: The Chairman of the Committee on Labor reports Resolution No. 2, and states that it has been embodied in the general report of the Committee. If there be no objection, this resolution will be stricken from the files.

The Clerk read as follows: "Mr. President: The Committee on Labor have considered Proposition No. 3, and have directed me to report the same back with the recommendation that it do not pass.

(Signed) BREEN,
Chairman.

The Clerk announced that Proposition No. 3 was a proposition introduced by Mr. Hogan, of Silver Bow, to prevent the importation of contract labor; received July 11th, read and referred to Committee No. 23, on Labor.

The Clerk read as follows: "Your Committee on Labor, to whom was referred Resolution No. 17, introduced by Field, of Park, have had the same under consideration, and have directed me to report the same back without recommendation."

(Signed) PETER BREEN,
Chairman.

The Clerk announced that Resolution No. 17 was a resolution offered by Mr. Field, of Park, for the protection of discharged employees; received July 11th,—read and referred to Committee No. 23, on Labor.

The President: These reports will be placed on General File, to be considered in Committee of the Whole.

The Clerk read as follows: 'Mr. President: The Committee on Labor have had under consideration Proposition No. 7, and have directed me to report the same back to the Convention, with the recommendation that it do not pass This does not apply to paragraph 4 of section 3, which we recommend be referred to the Committee on City, County and Town Organizations, where it properly belongs."

(Signed) BREEN,
Chairman.

The Clerk anounced the Proposition No. 7 was a proposition introduced by Mr. Allen R Joy, of Park; received July 11th, read and referred to Committee No. 23, on Labor.

The President· The same disposition will be made of this report, if there be no objection.

Mr. Collins, of Cascade: I suggest that the paragraph mentioned be referred to the Committee on City, County and Town Organizations, as suggested.

The President. If there be no objection, there will be copies made of the paragraph mentioned, and the paragraph referred to the Committee on City, County and Town Organizations.

The Clerk read as follows: "Mr. President: I have been instructed by the Committee on Labor to return Proposition No. 6, and state that it has been embodied in the report of the Committee."

The President If there be no objection, this will be stricken from the file.

Mr. Conrad, of Choteau· The Committee on Printing desire to report.

The President: The report of the Chairman of the Committee on Printing will be read.

The Clerk read as follows: "Mr. President: Your Committee on Printing, etc., have had under consideration Proposition No 17, and have carefully examined the same, and find it is correctly printed."

(Signed) C. E. CONRAD.
Chairman.

The President: This report will be received and placed on file, if there be no objection. Are there any other reports of standing Committees?

Mr. Kennedy, of Missoula: Mr. President, I suggest that the Convention go into Committee of the Whole.

Mr. Knowles, of Silver Bow· Mr. President, I move that we take a recess of ten minutes, as a distinguished visitor to Montana is in the building, Judge Cooley, of Michigan, who is an authority on Constitutions, and if there is no objection the members would probably like to see him, and I therefore move that we take a recess of ten minutes.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

The President: The Convention will take a recess until forty minutes past ten, at which time it will again be called to order.

The Convention was called to order at 10:45.

Mr. Collins, of Cascade: Mr. President, I would like to submit a report, if not a little out of order.

The President: The Chair has been requested to make the announcement that Rev. R. C. Wylie, District Secretary of the National Reform Association, will preach in the St Paul's M E. Church, Sunday evening. Subject· "The Acknowledgment of God in the Constitution." Members of the Convention are invited to attend.

Mr. Callaway, of Madison. Mr. President, I have the report of the Chairman of the Committee of the Whole, which considered General File No. 1.

The President: The report will be read by the Clerk.

The Clerk read as follows: "Mr. President: The Committee of the Whole have had under consideration General File No. 1, on Preamble and Bill of Rights, and have directed me to propose to the Convention certain amendments thereto, and as so amended do recommend its adoption, as follows:

1. Amend the Preamble by striking out, in the printed copy, the words "by virtue," and insert in lieu thereof "in accordance with the provisions."

2. Section 1. Amend same by striking out, in line 2, the word "from," and insert in lieu thereof the word "that".

3. Section 6. Amend same by striking out the word "should", in line 2, and insert in lieu thereof the word "shall."

4. Section 7. Amend by striking out, in line 4, the words "as near as may be."

Section 8. Amend by striking out the entire section and insert in lieu thereof the following: "Sec. 8. Criminal offenses of which justices' courts, and municipal and other courts inferior to the district courts have jurisdiction, shall be prosecuted by complaint. Criminal offenses of which the district courts have jurisdiction shall be prosecuted by information, after examination and commitment by a magistrate, or by leave of the court, or by indictment, without such examination or commitment or without such leave of court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall in his discretion consider it necessary and shall so order."

Section 11: Amend by striking out the words "or retroactive in its operation."

Section 131. That after Section 12 the following be inserted as Section 13, and all the remaining sections be so numbered as to correspond. "Section 13. That the right of any person to keep or bear arms in defense of his own home, person and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons."

Amend Section 14 by striking out the same, and inserting the following in lieu thereof: "Section 14. Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner."

Amend Section 15 by striking out the same and inserting the following in lieu thereof: Section 15. The use of all water now appropriated or that may hereafter be appropriated for sale, rental, distribution, or other beneficial use, and the right of way over the lands of others for all ditches, drains, flumes, canals and aqueducts necessarily used in connection wherewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use."

Section 16. Amend by inserting after the word "in", and before the word "criminal," the word "all." Also amend by adding to Section 16 the following: "subject to the right of the State to have a change of venue for any of the causes for which the defendant may obtain the same."

Section 17. Amend by adding at the end of the Section the words, "and in the presence of the accused and his counsel."

Section 18. Amend by inserting after the word "law", and before the word "the", as follows: "or if any juror or the judge of the court shall from sickness or other cause become unable to act after the impaneling of the jury."

Amend by striking out Section 23 and instead inserting the following: "Section 23. The right of trial by jury shall be secured to all and remain inviolate, but in all civil cases and in all criminal cases not amounting to felony, upon default of appearance or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. A jury in justices' courts, both in civil cases and in cases of criminal misdemeanor, shall not consist of more than six persons. In all civil actions two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all of such jury concurred therein."

Strike out Section 25 and insert instead the following: "Section 25. Persons of foreign birth or residence shall have the same right as native born citizens to acquire, purchase, possess, enjoy, convey, transmit and inherit mines and mining property and milling reduction, concentrating, and other works and real property necessary for or connected with the business of mining and treating ores and minerals. Provided that nothing herein contained shall be construed to infringe the authority of the United States to provide for the sale or disposition of its mineral and other public lands."

Section 31. Add a Section, to be numbered Section 31, as follows: "Section 31. No armed person or persons, or armed body of men, shall be brought into this State for the preservation of the peace or the suppression of domestic violence, except upon the application of the Legislative Assembly, or of the Governor when the Legislative Assembly cannot be convened."

Respectfully submitted,
(Signed) CALLAWAY,
Chairman.

The President: What is the pleasure of the Convention concerning this report?

Mr. J. K. Toole, of Lewis & Clarke: I move the adoption of the report.

The motion was seconded.

Mr. Watson, of Fergus: Mr. President, I have noted on my copy of this Preamble and Bill of Rights one or two amendments which I do not see referred to in the report of the chairman of the Committee of the Whole. In the fourth line of Section 9 as printed, the word "attained" should be "attainted." The other correction is, I think, where the suggestion was made by the gentleman from Lewis & Clarke (Mr. Toole) in reference to the change of venue in certain cases.

Mr. Callaway, of Madison: Mr. President, the amendment of Section 9 was simply a correction of the spelling. That is a matter that belongs to the Committee on Phraseology and Revision. The other amendment that the gentleman suggested was not adopted.

Mr. J. K. Toole, of Lewis & Clarke: Mr. President, the amendment suggested by the gentleman from Fergus (Mr. Watson) was adopted by the Committee, which added these words: "subject to the right of a change of venue on the part of the State for the same causes for which the defendant might obtain the same." That was adopted by the Committee.

Mr Maginnis, of Lewis & Clarke: Mr. President, would it not be well to allow this report to be printed, with the amendments? It can then be reviewed by the members before its formal adoption by the Convention.

Mr. Bickford, of Missoula: Section 23 was not stricken out.

Mr. Callaway, of Madison: If there is no objection I would like to withdraw the report for a few moments.

The President: The gentleman desires to withdraw the report for the present.

Mr. Callaway, of Madison: I would say to the gentleman from Missoula that this reference to the corrected numbers and not to the printed copy, it does not state that Section 23 was stricken out. The substitute offered for Section 23 was adopted and numbered 23.

The President: Does the Chair understand that the gentleman desires to withdraw his report?

Mr. Callaway, of Madison: Yes sir, for the present.

The President: The gentleman from Madison, Chairman of the Committee of the Whole, will withdraw the report for the purpose of correction, and will present it again.

The President: The gentleman from Cascade, Chairman of the Committee on Finances of the State, etc., desires to make a report, and if there be no objection his report will be received

The Clerk read as follows: "To the Hon. President of the Constitutional Convention: Your Committee on Finances of the State, etc., to whom was committed the resolutions mentioned herein, beg leave to report the same as follows: Resolution No. 11, by J. K. Toole, relating to taxation and exemptions therefrom, has been duly considered and acted upon favorably in the report of the Committee. Resolution No. 15, by Luce, relating to license taxes, was discussed before the Committee, who have instructed me to report adversely on the proposition. Resolution No. 20, by Luce, limiting the number of retail liquor dealers, was rejected by the Committee, who deemed the subject matter a more proper article for legislation. They recommend that the resolution be not adopted. Resolution No. 21, by Luce, prohibiting gambling, was rejected as being entirely within the province of the legislative power. The Committee recommend that the resolution do not pass. Resolution

No. 25, by Burleigh, requiring the State to assume county indebtedness was decided upon adversely. The Committee see no reason to justify them in incorporating such a provision in the Constitution.

Respectfully submitted,
(Signed) T. E. COLLINS, Chairman of Committee.

Mr. Burleigh, of Custer: Mr. President, I shall be under the necessity of moving this body that the report of the Committee be rejected, and that the resolution be adopted by the Convention; and while I do not care to bring the matter up today, I give notice that I will bring it up, if in order, at the next session of this Convention.

The President: The Chair would ask to what resolution the gentleman refers.

Mr. Burleigh, of Custer: I mean the resolution recommending that the State assume the indebtedness of the different counties on coming into the State. It was referred here to the Committee on Finances, or some other committee, on yesterday, and it seems to have been reported adversely.

The President: The Chair would state that this resolution .will take its place on the file, and come up in its regular order. Resolution No. 11 will be referred to the Committee on Printing, and ordered to be printed.

Mr. Ramsdell, of Missoula: I would like to ask the gentleman what the indebtedness of Custer county is.

Mr. Burleigh. If the gentleman will take the trouble to look at the report he will find it there in dollars and cents. My impression is that the aggregate is a little over two hundred thousands dollars, and deducting the public improvements, it would bring it down to something like one hundred and sixty thousand dollars.

The President: The Chair desires to state that this question is not in order at present.

Mr. Burleigh, of Custer: I think so myself (Laughter).

Mr. Collins, of Cascade: Mr. President, I move that when the Convention adjourn at this session, it adjourn to meet on Monday, at 4 o'clock.

The motion was seconded.

The Chair put the motion, and the same was declared lost.

Mr. Burleigh of Custer: I move that when the Convention adjourn, it adjourn to meet at 10 o clock on Monday.

Mr. Warren, of Silver Bow: I move to amend by making it 2 o'clock.

The motion was seconded.

Mr. McAdow, of Fergus: I move to amend, that we take a recess until 2 o'clock this afternoon.

The President: The question to fix the time takes precedence of the question to adjourn, hence the motion of the gentleman is not in order.

Mr. Eaton, of Park: How many amendments to the motion have been made, and is an amendment now in order?

The President: There is only one amendment so far—to change the hour from 10 o'lcock until 2.

Mr. Eaton, of Park: Then I move to substitute by making the hour 9 o clock on Monday.

The amendment was seconded.

Mr. Cooper, of Gallatin: I hope that motion will not prevail. Several of us wish to go East to our homes, and it will be impossible to be here by 9 o'clock. I hope the gentleman will withdraw his motion. It seems to me that 2 o'clock would be the more appropriate hour.

Mr. Eaton, of Park: Mr. President, there are several of us who want to go East very badly but we cannot get there, and I, for one, want to proceed with the business of this Convention and get through with it. If the gentleman can go home and get back in two days, he is favored, but there are those who are not so happily situated, of whom I am one, and we want to get through with the business.

Mr. Ramsdell, of Missoula: I agree with the remarks of the gentleman from Park. My place of business being situated as it is I am unable to go away and get back again in less than five days, and I am in favor of having the work of the Convention expedited as much as possible.

The Chair put the question on the amendment of the gentleman from Park, and the same was declared lost.

The President: The question now recurs upon the amendment to fix the hour at 2 o clock on Monday.

Mr. Craven, of Lewis & Clarke. I move to amend the motion now before the house by expunging the word "2" and inserting therein the word "10."

The President· The gentleman's motion is out of order. The regular time, as fixed by the rules, is 10 o'clock.

Mr. Maginnis, of Lewis & Clarke· Mr. Chairman, I suggest that we can oblige a great many gentlemen who wish to go home to spend Sunday, and if we choose we can hold a night session on Monday night. I suggest that by unanimous consent we do that—that is, make up the time in the evening. It is a matter of indifference to me personally.

Mr McAdow: I move that we give the gentlemen permission to go home; I do not see why we should stop the business of the Convention.

The Chair put the question on the amendment to make the hour 2 o'clock on Monday, and a division being called for, the motion was declared carried.

Mr. Callaway, of Madison, sent up the report of the Committee of the Whole, properly amended.

The President. The Clerk will read that portion that is corrected by the Chairman of the Committee.

The Clerk read as follows: "Section 16. Amend by inserting after the word "in," before the word "criminal", the word "all". Also amend by adding to Section 16 the following "subject to the right of the State to have a change of venue for any of the causes for which the defendant may obtain the same.'

The President· What is the pleasure of the Convention concerning the report of the Committee of the Whole which considered General File No. 1.

Mr. Collins, of Cascade: I move its adoption.

The motion was seconded.

Mr. Craven, of Lewis & Clarke: Mr. Chairman, do I understand that this is the final passage?

The President: No sir, it has to go upon its final passage and be adopted section by section, by ayes and noes.

Mr. Dixon, of Silver Bow: I would like to inquire whether the report is now open for amendment.

The President Not until it comes before the Convention on its final passage. This is simply the report of the Committee.

The Chair put the question upon the adoption of the report of the Committee, and the same was declared carried.

The President: What is the pleasure of the Convention as to having this report printed, with the amendments?

Mr. Collins, of Cascade, moved that the report of the Committee of the Whole be printed.

The motion was seconded.

Mr. Hickman, of Madison: Should not this all go to the Engrossing Clerk?

Mr. Maginnis, of Lewis & Clarke: No, it goes to the head of the house, it has not been passed yet.

The President: The question before the Convention is upon the motion of the gentleman to have the report printed as amended.

Mr. Collins: I wish to add to that motion, with the consent of the Convention, that it be referred to the Committee on Engrossing and Enrolling, and then put in the hands of the Committee for printing.

Mr. Robinson, of Deer Lodge· Mr. President, it rather seems to me, for the purpose of expediting business, that the better way would be to bring this up before the Convention and get through with whatever amendments we have before it is engrossed or printed. I think the better way would be for the Convention to pass upon whatever amendments we desire to make before engrossing.

Mr. Middleton, of Custer: Mr. President, as I understand the motion, it is now to refer to the Enrolling and Engrossing Committee with instructions to engross and print. Now that Committee and the printing Committee are two separate and distinct committees. It seems to me that it should go to the engrossing Committee and then be referred back here, properly engrossed, and then sent to the printing Committee; but it does not seem to me desirable to print these matters anyway, and at any rate not until they are acted upon in Convention.

The President: Does the gentleman offer that as a motion to amend?

Mr. Middleton, of Custer: I simply suggest that it should go to the Enrolling Committee, without any instructions as to the matter of printing.

Mr. Colins, of Cascade: That was my intention—to refer to the Engrossing Committee and then have it referred back.

Mr. Kennedy, of Missoula: It seems to me that the proper place for all that to go is to the Engrossing Clerk. I do not think the Printing Committee have anything to do with it. It seems to me that the committee that has been selected for that purpose should do the engrossing.

The President: The question is upon the motion of the gentleman from Cascade, that the report of the Committee of the Whole, having under consideration General File No. 1, be referred to the Engrossing Committee to be engrossed.

Mr. Luce, of Gallatin: Mr. President, I am not a very good parliamentarian, nor do I understand these tactics very well, but I would like to know the benefit of sending this report to the Engrossing Committee. As I understand it, that Committee was for the engrossing of bills after they have been passed. I cannot see why the Printing Committee cannot correct this and put in all these amendments, and have it printed.

Mr. Bickford, of Missoula: Mr. President, let us save three or four days' time now by referring this to the Printing Committee, and have it come back here by Monday morning, and then it can go to the Enrolling Committee, and afterwards come up for final passage.

Mr. Maginnis, of Lewis & Clarke: I move to amend, that the report go to the Printing Committee, to have it printed, with the amendments, and then that it take its place at the head of the house calendar.

The motion was seconded.

The Chair stated the motion.

Mr. Dixon, of Silver Bow: Mr. President, I am not very familiar with the proceedings in these matters myself, but it occurs to me that we are establishing rather a bad precedent, and one that is rather expensive and dilatory as well. Now this report may be amended when it comes up for final passage. It has been printed once and reported. Why not bring it up in its regular order, and when it is agreed to in Convention, then let us have it printed; but if we are going to print every article two or three times over, why it will incur an unnecessary expense, and it strikes me there will be a good deal of delay.

Mr. J. K. Toole, of Lewis & Clarke: Mr. President, I move to amend by putting this proposition on its final passage at this time.

Mr. Maginnis, of Lewis & Clarke: Then I withdraw my motion.

The President: The motion made by the gentleman from Lewis & Clarke, to refer to the Engrossing Committee, is withdrawn. The question now before the Convention is upon the motion of the gentleman from Lewis & Clarke (Mr. Toole), that this Preamble and Bill of Rights be put upon its final passage.

Mr. Dixon, of Silver Bow: I desire to offer an amendment, that it be read by sections.

The President: I would say to the gentleman that the rules provide for that.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Toole), and the same was declared carried.

The President: File No. 1 will now be read by section. It will be read first as reported by the Committee, and then the amendments to each section.

Mr. Burleigh, of Custer: I think it should be read as taken from the hands of the Committee of the Whole and as amended, and without any regard to the printed form.

The President: If that is the sense of the Convention, the Clerk will proceed to read the sections as amended.

The Clerk read the Preamble.

The President: The Chair would state that this will be read now as amended, by sections, and it is subject to amendment again; but if there be no amendments to be offered, we will pass over the Article section by section, consecutively, until the whole is read, and then a vote may be taken upon the whole file as amended.

Mr. Aiken, of Silver Bow: My understanding was that when this was passed there was an amendment in the first line, as follows: "We, the people of the Territory of Montana," instead of "We, the people of Montana."

Mr. Maginnis, of Lewis & Clarke: That was not adopted.

Mr. Schmidt, of Silver Bow: I move to strike out the sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth words.

The President: The gentleman from Silver Bow offers the following amendment to the Preamble: strike out from the sixth to the fourteenth words, on the first line. The words proposed to be stricken out are as follows, "to Almighty God for the blessings of liberty." The Preamble as amended would read, "We, the people of Montana, in order to secure the advantages of a state government," etc.

The motion was seconded.

The ayes and noes were called for.

The Clerk called the roll down to Mr. Robinson's name. Mr. Robinson, though present, took no notice of the call, whereupon the Clerk repeated his name several times.

The President asked if the gentleman desired to be excused from voting. Mr. Robinson did not respond.

The Clerk proceeded with the call of the roll, many of the members being absent.

Mr. Aiken, of Silver Bow: Mr. President, I move the call of the house.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

The Sergeant at Arms endeavored to secure the attendance of the members, but without success.

Mr. Cooper, of Gallatin: I move that further proceedings under the call be dispensed with; all the gentlemen absent have gone home.

The motion was seconded.

The Chair put the motion, and the same was declared lost.

The President: The Clerk will continue the call of the roll.

Mr. Callaway, of Madison. Mr. President, I arise to a point of order, to inquire whether any further proceedings can be had in this Convention until the call of the house.

The President: There is no motion in order except a motion to adjourn.

Mr. Burleigh, of Custer: I move that the Convention do now adjourn.

The motion was seconded.

Mr. Kohrs, of Deer Lodge: Before the adjournment of the house, I would like leave of absence until Wednesday.

Mr. Goddard, of Yellowstone: I desire to be excused until 3 o'clock on Monday.

The President: If there be no objection, the gentlemen will be excused.

The Chair put the question on the motion to adjourn, and the same was declared carried, and the Convention adjourned until Monday, July 22nd, 1889.

Adjourned.

FOURTEENTH DAY.

Monday, July 22nd, 1889.

The Convention was called to order by the President at 2 P. M

The Clerk called the roll.

The President: Messrs Graves, Knippenberg and Gaylord desire to be excused until tomorrow (Tuesday), and Mr. Hammond, of Jefferson. to be excused until Thursday. If there be no objection these gentlemen will be excused.

Mr. J. K. Toole, of Lewis & Clarke: Mr. Durfee desired leave of absence for today.

The President: If there be no objection, Mr. Durfee will be granted leave of absence.

Mr. Rotwitt, of Meagher, asked leave of absence for Mr. Kanouse.

The President: If there be no objection Mr. Kanouse will be excused.

The Chaplain offered prayer.

The Clerk read the Journal of the thirteenth day.

The President: If there be no corrections, the Journal of the thirteenth day will be approved.

Mr. Conrad, of Choteau: Mr. President, I desire to make a report.

The President: The report of the Committee on Printing will be read.

The Clerk read as follows: "Mr. President: Your Committee on Printing, etc., to whom was referred Propositions Nos. 18, 19, 21 and 22, with instructions to print, beg leave to report that they have compared the printed copies with the original and find them correctly printed, with the exception of Proposition No. 21, which has been corrected by pen.

(Signed) CONRAD, Chairman.

The President read the order of business.

Mr. Warren, of Silver Bow: Mr. Chairman, I move that the Preamble of File No. 1 be made the special order for next Thursday morning, as a number of gentlemen are absent.

The motion was seconded.

The Chair put the motion, and the same was declared lost.

The President: File No. 1, as reported back from the Committee of the Whole, with the amendments adopted, has been engrossed. The Clerk will read the same.

The Clerk read the Preamble.

Mr. Burleigh, of Custer: I move the adoption of the Preamble.

The motion was seconded.

Mr. Warren, of Silver Bow: Mr. President, I understand the amendment of Mr. Dixon has not yet been disposed of. I believe the vote was not announced. The Clerk will read the substitute offered by the gentleman from Silver Bow.

The Clerk read as follows: "Strike out all of Preamble and insert instead "We, the people of Montana, do ordain and establish this Constitution.""

Mr. Eaton, of Park: Mr. President, I would like to ask what the minutes of the Convention show in regard to the action taken on this Amendment.

The President: The minutes show that the question was put to the Convention, but the result has never been announced. The Convention adjourned before the proceedings were completed.

Mr. Middleton, of Custer: I understand that the Convention is now under the head of unfinished business. It seems to me, that in view of the fact that a great many of the members are absent, some of them perhaps unavoidably, and several who have been excused, that perhaps it is not best for the Convention to take up and determine this matter now. There is plenty of work that can be done in the Committee of the Whole, and I move, as an amendment, if it be in order, that the order of business—unfinished business—be now dispensed with, and that the Convention now resolve itself into a Committee of the Whole for the consideration of other business. I believe that it is nothing more than just that a great many who are absent should be allowed to vote on the Preamble. In view of the fact that we have some other business in the Committee of the Whole, it is really not necessary that we should take final action at this time.

Mr. Burleigh, of Custer: It seems to me, that inasmuch as the vote has been reached upon the substitute of Judge Dixon, that it should be announced.

The President: There has been no second to the motion I believe. This matter has now come before the Convention anew. I would state to the gentleman from Custer (Mr. Middleton) that his motion is not in order unless by unanimous consent the Convention desires to entertain it.

The Clerk read the amendment of the gentleman from Silver Bow, Mr. Dixon.

Mr. Rickards, of Silver Bow: Inasmuch as I was absent on Friday afternoon and during Saturday, I would like to ask for information, is this Proposition No. 1 up for final passage?

The President: Yes, sir.

Mr. Rickards, of Silver Bow: Would it not be in order to postpone, and allow this matter to be made the order for a certain hour?

The President: The Chair would state to the gentleman that a motion to that effect has already been entertained and lost.

Mr. Rickards, of Silver Bow: It does seem to me, if I am in order, noticing the large number that are absent, that it would be manifestly unjust for us to proceed to a final disposition of this bill now before us; and it seems to me there ought to be a way out by which we can accommodate a large number of the absent members, whom I know desire to cast their vote on the final adoption or rejection of the matter now before us.

Mr Burleigh, of Custer: It seems to me, Mr. President, that inasmuch as the ayes and noes were called on Saturday, that the vote upon that question should be announced, so as to give some one who voted in the affirmative, if they desire an opportunity, to reconsider. The ayes and noes were called upon the adoption of Judge Dixon's substitute, and I would like to have the result announced, so as to dispose of it. So far as expecting the members to be here at all times for the expeditious working of the business of the Convention, I have abandoned all idea of it. We have made up our minds to go on—those who want to remain here—and complete the business of this Convention.

The President: The Chair would state that the Convention adjourned without the vote being announced, and the roll would have to be called again.

Mr. Witter of Beaverhead Was not this Convention working under a call of the house when we adjourned?

Mr. Maginnis, of Lewis & Clarke: The adjournment does away with the call.

The President: I would state to the gentleman from Beaverhead that the question entertained and passed upon by the Convention was to make this a special order. I would say to the gentleman further, that a motion to postpone to a day certain would be in order.

Mr. Rickards, of Silver Bow. In view of the large number that are absent, as I said awhile ago, who, I know, want a voice in the settlement of this matter—and I think their preference should be considered—I move the postponement of this bill now before us—General File No. 1, I think it is called—until the hour of ten o'clock tomorrow.

The motion was seconded.

Mr. Carpenter, of Lewis & Clarke I move to amend that in this way, that we postpone to ten o'clock tomorrow; in the meantime the Printing Committee be instructed to have this Bill printed and on the tables of the members There are very important matters in this Bill of Rights, the most important that will come before the Convention, the matter in relation to grand juries and the imprisonment of witnesses, and several other things I have not time to enumerate; and I think it is very unwise for the Convention to act upon it without each member having the language of the Bill before him. The engrossment amounts to nothing. The members cannot examine critically the language of the engrossed bill Therefore I would move, as an amendment that it not only be postponed until tomorrow, but that in the meantime it be printed, under the direction of the Printing Committee, and laid on the tables of the members.

Mr. Rickards, of Silver Bow: I will accept that amendment.

Mr. Callaway, of Madison: I move to amend that it be referred to the Committee on Engrossment for report, before printing.

Mr Carpenter, of Lewis & Clarke: It has been engrossed already.

Mr. Callaway, of Madison But there has been no report made.

Mr. Carpenter, of Lewis & Clarke. I will accept my amendment that will put this matter upon the desks of the members of the Convention; it will be a mere expense of ten dollars perhaps; but I will not accept anything that will delay it I want this bill printed at the first moment.

The President: Does the Chair understand that the gentleman from Lewis & Clarke accepts the amendment offered by the gentleman from Madison?

Mr Carpenter, of Lewis & Clarke: I will accept it, yes sir.

The President: The question is upon the motion of the gentleman from Lewis & Clarke, which has been amended, and the amendment accepted, that it be referred to the Engrossing Committee to be reported upon.

The Chair put the question on the motion, and the same was declared carried.

The President: Did the Chair understand the motion of the gentleman from Lewis & Clarke to include the printing of the report?

Mr. Carpenter: Yes sir,—that it be printed by the Printing Committee as early as possible.

The President: It is moved and seconded, that upon the return of this Bill No. 1 from the Engrossing Committee, it be ordered to be printed.

Mr. Middleton, of Custer: The motion is out of order. It certainly is now in the hands of the Engrossing Committee, and is beyond the power of the Convention until that Committee reports.

The President: The point of order is well taken.

Mr. J. K. Toole, of Lewis & Clarke: I ask leave to make a report as Chairman of the Committee of the Whole on General File No. 11.

The President: The report of the Chairman of the Committee of the Whole on General File No. 11 will now be read.

The Clerk read as follows: "Mr. President: Your Committee of the Whole, to whom was referred the General File for consideration, beg leave to report as follows. The Committee has had under consideration General File No. 11, Proposition No. 13, on Boundaries, and return the same with the recommendation that it do pass. The Committee has also considered general File No. 7, Resolution No. 13 restricting appropriations by Legislative Assembly, and return the same with the recommendation that it do not pass. The Committee further recommends that General File No. 8, Resolution No. 12, on Suffrage, and all minor resolutions of like nature, be hereafter considered in Committee of the Whole in connection with the main report of the Committee to which such resolutions properly appertain.

(Signed) JOSEPH K. TOOLE,
Chairman of the Committee of the Whole."

Mr. J. K. Toole, of Lewis & Clarke: I move the adoption of the report.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, and the same was declared carried.

Mr. J. K. Toole, of Lewis & Clarke: I now move that the proposition embodied in that report and reported favorably be now placed upon its final passage.

The motion was seconded.

The Chair put the question, and the same was declared carried.

The Clerk read as follows: "Article I. Boundaries. Section 1. The boundaries of the State of Montana shall be as follows, to-wit: Beginning at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude, thence due west on the forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington, thence due south along the thirty-fourth degree of longitude to a point formed by its intersection with the crest of the Rocky Mountains, thence following the crest of the Rocky mountains northward to its intersection with the Bitter Root Mountains; thence northward along the crest of the Bitter Root mountains, to its intersection with the thirty-ninth degree of longitude west from Washington; thence along the thirty-ninth degree of longitude northward to the boundary line of the British possessions; thence eastward along that boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along the twenty-seventh degree of longitude to the place of beginning."

The President: As many as are in favor of the Article as read being adopted and becoming a part of the Constitution, will say aye as their names are called.

The Clerk called the roll.

The vote was as follows: Ayes—Aiken, Bickford, Brazleton, Breen, Buford, Bullard, Burleigh, Burns, A. J.; Burns, A. F.; Burns, Edward; Callaway, Cardwell, Carpenter, Cauby, Chessman, Conrad, Courtney, Craven, Dixon, Dyer, Eaton, Fields, Gillette, Hatch, Hershfield, Hickman, Hobson, Hogan, Joyce, Kennedy, Knowles, Loud, Luce, Maginnis, Marion, Marshall, Mayger, Middleton. Mitchell, Muth, Parberry, Ramsdell, Reek. Robinson, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, J. K. Toole, J R. Toole, Warren, Watson, Whitehill, Winston, Witter, Mr. President; total, 57. Nays, none. Absent: Browne, Collins, Cooper, Durfee, Gaylord, Gibson, Goddard, Graves, Hammond, Hartman, Haskell, Joy, Kanouse, Knippenberg, Kohrs, McAdow, Myers, Webster; 18.

Mr. Maginnis, of Lewis & Clarke. Mr. President: I move that the Article on Boundaries take its place in the Constitution after the Bill of Rights, or before the Bill of Rights and after the Preamble.

The President: Do I understand the gentleman's motion is that the Article on Boundaries shall be inserted immediately after the Preamble?

Mr. Maginnis: Yes sir.

The motion was seconded.

Mr Warren, of Silver Bow: Mr. President, I do not know whether or not it would be proper to have these things referred to the Committee on Revision and Phraseology?

Mr. Maginnis: I would move, then, to refer to the Committee on Revision and Phraseology.

Mr. Eaton, of Park: Do I understand there is a motion before the house?

The President: There is a motion to refer to the Committee on Revision and Phraseology. (To Mr. Maginnis of Lewis & Clarke) Does the gentleman mean to withdraw his motion in regard to placing this Article?

Mr. Maginnis, of Lewis & Clarke: Yes sir.

The President: The question is then upon the reference of the Article to the Committee on Revision and Phraseology.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, and the same was declared carried

Mr. Kennedy, of Missoula: I move that General File No. 2, Article on Military Affairs, which has been reported upon favorably, be now placed upon its final passage.

The motion was seconded.

The Chair put the question on the motion, and the same was declared carried.

The Clerk read as follows: "Proposition No. 9. General File No. 2. Report of Committee on Military Affairs. Section 1. The militia of the State of Montana shall consist of all able bodied male citizens of the State between the ages of eighteen and forty-five years inclusive, except such persons as may be exempted by the laws of the State or of the United States."

Mr. Reek, of Deer Lodge· I wish to offer an amendment to that section.

The President The gentleman from Deer Lodge offers to amend Section 1 of General File No. 2, by inserting the following after the word "citizens," in the first line, "and those who have declared their intention to become citizens."

The motion was seconded.

The Chair put the motion, and the same was declared carried

The Clerk read Section 2, as follows: "Sec. 2. The Legislative Assembly shall provide by law for the organization, equipment and discipline of the militia, and shall make rules and regulations for the government of the same. The organization shall conform as nearly as practicable to the regulations for the government of the armies of the United States."

There being no amendments to Section 2, the Clerk read Section 3 as follows: "Sec. 3. The Legislative Assembly shall provide by law for maintaining the militia by appropriations from the treasury of the State."

There being no amendments to Section 3. the Clerk read Section 4 as follows: "Sec. 4. The Legislative Assembly shall provide by law for the safe keeping of the public arms. military records, relics and banners of the State."

There being no amendments to Section 4, the Clerk read Section 5, as follows: "Sec. 5. When the Governor shall, with the consent of the Legislative Assembly, be out of the state in time of war at the head of any military force thereof, he shall continue commander-in-chief of all the military forces of the State."

Mr. Stapleton, of Silver Bow: I desire to make an inquiry as to this last section. It provides that when the Governor is absent from the State he shall still be at the head of the military forces thereof. Is there any provision providing that he shall be at the head of the military power of the State?

Mr. Maginnis, of Lewis & Clarke: It is in the executive department of the constitution.

The President: File No. 2, on Military Affairs, will now be put upon its final passage. The ayes and noes will be entered upon the Journal.

Mr. Robinson, of Deer Lodge: I desire to offer an amendment, to be added as Section 6.

The President: The gentleman from Deer Lodge offers the following amendment: "Sec. 6. That the militia of the State shall not be called out except in case of eminent public danger, or upon urgent necessity, in aid of the civil authorities in the enforcement of process issued from some court of competent jurisdiction."

The motion was seconded.

Mr. Knowles, of Silver Bow: Mr. Chairman, I think that that provision would be what I might term unconstitutional. The militia may be called out by order of the President of the United States. I would like to have the gentleman from Deer Lodge explain what he means by the words "except by virtue of some judicial authority or in aid of the civil authorities."

Mr. Eaton, of Park: Before the gentleman explains, I would like to mention one other matter. As I understand the section as read, it would also prohibit the Governor from calling out the militia for an annual encampment, or for drill purposes, for a week, or that matter. Will the gentleman also explain that as he answers Judge Knowles' query?

Mr. Hershfield, of Lewis & Clarke: And I should also like to have the gentleman explain who is to decide what "eminent danger" is.

Mr. Rickards, of Silver Bow: It seems to me that there is one other expression there, and that is the expression "upon urgent necessity." Who is to be the judge of that? It seems to me that if you should put a provision like that in there, some one ought to be the judge of what is "eminent danger" or "urgent necessity." I am not a lawyer, nor the son of a lawyer, but it seems to me that it would be a lame way of putting it I would like to hear from the gentleman as to who, in his judgment, would sit in judgment upon the "eminent necessity" of calling out the militia.

Mr. Robinson, of Deer Lodge: Mr. President, in answer to the queries of the gentlemen I would suggest to the Convention that it is a proposition which is rather unusual in state constitutions. It is a declaration in the Constitution of the will and intent of the people of the State as to when the state militia shall be called out. First, in answer to the query of the gentleman from Silver Bow, I would advise him that my understanding of the law is simply this, that whenever it is necessary upon the call of the sheriff of a county. It is the usual course to be taken, and a proper provision should be made for that by the Legislature of the State. And it is the usual course, that wherever the militia of the State is to be called into requisition to aid the civil authorities in the enforcement of process issued from the courts, it is done by an appeal to the Governor of the State, or on representation that there is resistence to the execution of civil process. Upon that call, upon that representation being made, the Governor, as the chief executive officer of the State, is empowered then to call out a sufficient number of the militia to aid the sheriff as a posse to enforce the process of the courts of the State. That I have always understood was the process whereby the militia of the State was reached, and the proper one to be reached to aid the officers in the enforcement of the processes of the courts of the State. That is what that part of it is intended for. Then the other part of the section is intended as an expression of opinion on the part of the State, that the militia should not be called out except in cases of this urgent necessity. The object of that is to guard against the calling out of the militia of the State on every silly and foolish pretext that might be devised and gotten up by parties who are extremely anxious to make a display, or where parties in different remote parts of the State may urge the necessity of the militia to suppress Indian depredations, which, as we have seen time and again, have turned out to be utterly and entirely false.

If a system of that kind were tolerated it would be a very easy thing to get up a scare, and without sufficient cause or reason to call out the militia of the State and involve the State in hundreds of thousands of dollars of debt in thus calling out the militia and sending them to different parts of the State. And this is intended as an expression and direction, which I have frequently met with in constitutions as to calling out the militia of the state, that it should only be done in cases of urgent necessity. So far as the matter of urgent necessity is concerned, perhaps it would be a difficult matter to leave it in the hands of the governor to determine or in the hands of any tribunal to say in what cases there would be sufficient exigency for calling out the militia. It would be impossible to establish any mathematical rule by which the necessity of it would be determined. But this is only an expression in the Constitution that the militia shall be called out only in these special cases. I am not sure, Sir, but there should have been placed there the disjunctive "or"—"or in the enforcement of process," etc. The amendment was hastily drawn, but I desire to get it before the Convention, and think it is a material proposition for the Convention to give some expression to. It reads, "that the militia of the State shall not be called out except in case of eminent public danger or upon urgent necessity, or in aid of the civil authorities in the enforcement of process issued from some court of competent jurisdiction." There was one proposition suggested by the gentleman from Lewis & Clarke County, that it would not be proper to prevent the militia from parading if they desire The objection to this is that they should not be called into active service So far as the militia of the State being called out to parade, and to march around and have a good time among themselves, or have a display, no one can object to it while it does not cost the State anything. It is only these propositions that are likely to cost the state some money that it is intended to reach I presume I will be allowed to correct my motion?

The President· If there be no objection the gentleman from Deer Lodge will be allowed to correct his motion.

Mr. Robinson I have just made a correction in it in conformity with the suggestion I made.

Mr. Maginnis, of Lewis & Clarke: I will say, in defense of the Military Committee, that we found no such provision in the constitution of any of the states We make the Governor Commander-in-chief of the militia, and we must give him some discretion. Wisdom will not die with this body, nor will civilization fail when we are gone. If we propose to make a government for the people of Montana, and if they are fit for self-government, they will, in all probability, be able to maintain and perpetuate it; and I undertake to say that the verdict of the voters of the State upon any Governor who would wantonly and maliciously call out the militia and put the people of the State to expense, and subject himself to the ridicule of the press and the good sense of the people to whom we propose to submit the maintenance of the Government, would be quite a sufficient safeguard against it, and I hope the resolution will be voted down

Mr. Whitehill, of Deer Lodge: I think, if this amendment is adopted, it will be necessary to adopt another amendment providing the cases in which the Governor shall call out the troops. It is purely a matter for the Legislature to act upon I think if the gentleman of the Convention desires to adopt this amendment that it will certainly follow that we must adopt another amendment providing when and for what purpose the Governor shall call out the militia. I think the report of the committee should be adopted just as it is, without the adoption of any other section.

Mr. Middleton, of Custer: It appears to me, from the reading of Section 2 of the file as it now stands, it shows the intention to leave the matter entirely with the Legislature, where it belongs. (Reading) "Section 2. The Legislature shall provide by law for the organization, equipment and discipline of the militia, and shall make rules and regulations for the government of the same"

Mr Maginnis, of Lewis & Clarke· The whole of the military and naval power of the United States is based upon those words.

Mr. Middleton, of Custer: In the Constitution all that is necessary for us to do, all that is necessary to be done, and all that should be done, is to declare what kind of persons shall be subject to military duty, which is done here in Section 1, and who shall be commander-in-chief of the militia. That is done here in the last section. Now, then, to add the proposed amendment, to leave the matter in such a shape that some one-horse justice of the peace would have the power to determine what was "eminent danger," instead of leaving it to the executive of the state, seems to me a proposition that savors of absurdity. I think the article is sufficient and ample as it stands.

The President: The question is upon the amendment offered by the gentleman from Deer Lodge, that the militia of the state shall not be called into service except in case of eminent public danger or of urgent necessity, or in aid of the civil authorities in the enforcement of process issued from some court of competent jurisdiction.

The Chair put the question on the motion of the gentleman from Deer Lodge, and the same was declared lost.

The President: The question now recurs upon File No. 2, of Military Affairs. As many as are in favor of the adoption of the article will, when their names are called, say "aye."

Mr. Luce, of Gallatin: I call for the reading of Section No. 1, as amended.

The Clerk read as follows: "Section 1. The militia of the State of Montana shall consist of all able-bodied male citizens, and those who have declared their intention to become citizens of the State, between the ages of eighteen and forty-five years, inclusive, except such persons as may be exempted by the laws of the State or of the United States."

Mr. Luce: There is no such. thing as a declaration of a person to become a citizen of a state. It should read, "those who have declared their intention to become citizens of the United States and who reside within the State." It is meaningless as it is.

Mr. Reek, of Deer Lodge: Mr. President, I hardly think it reads that way. I think that the inference I would have is that it means a citizen of the United States.

The Clerk re-read the section.

Mr. Maginnis, of Lewis & Clarke Mr. President: It will be seen that this provision will hinge upon whatever qualification that is made in the article on Suffrage and Qualifications. If that article shall go on and declare that the citizens of this state—and those who are qualified shall be those who are citizens of the United States—shall vote, why it will be one way; and if it says "those who are citizens of the United States, or those who have declared themselves to become such, "it would take them all in.

Mr. Luce, of Gallatin: I move to re-consider the vote by which this amendment was adopted.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

The President: The question recurs now upon the adoption of the amendment of the gentleman from Deer Lodge (Mr. Reek).

The Clerk read Mr. Reek's amendment.

The President: What is the pleasure of the Convention concerning this amendment?

Mr. Kennedy, of Missoula: It seems to me that this is the amendment just passed upon.

The President: It was adopted by the vote of the Convention, but it has been moved to re-consider, and the motion to re-consider has been carried.

Mr. Knowles, of Silver Bow: I wish to offer an amendment to that. I wish to have it so that it will read, the militia of the United States shall consist of all able-bodied citizens of the United States.

The President: Will the gentleman from Deer Lodge accept the amendment?

Mr. Reek, of Deer Lodge: Yes sir.

The President: The Chair desires to ask the gentleman from Silver Bow if this amendment is intended to include the whole section.

Mr. Knowles, of Silver Bow: Yes.

The Chairman: The Clerk will read as amended.

The Clerk read as follows: "Substitute for Section 1.

Section 1. The militia of the State of Montana shall consist of all able-bodied male citizens of the State and those who have declared their intentions to become citizens of the United States, residing in the State, between the ages of eighteen and forty-five years inclusive, except such persons as may be exempt by the laws of the State or of the United States."

The President: What is your pleasure?

Mr. Chessman, of Lewis & Clarke: Mr. President, it seems to me that any reference to any amendment here is useless. We have already declared in Proposition 14 who citizens of the State are. We have already declared that he shall be a citizen of the United States; he shall have resided in the State one year immediately preceding the election at which he offers to vote. We declare there who a citizen of the State is. Now, what is the use of amending it?

Mr. Maginnis of Lewis & Clarke: Mr. President, what right has any State to declare any man subject to its military laws unless he is a citizen of the United States?

The President: There is no motion before the house.

Mr. Knowles, of Silver Bow: I move the amendment be adopted.

The motion was seconded.

Mr. Maginnis of Lewis & Clarke: The Military Committee have simply declared what citizens of the State shall be subject to its military duty, and in another article of the Constitution is is defined what they shall do. I hope the article will stand.

Mr. Callaway, of Madison: In accordance with what the gentleman from Lewis & Clarke has just said, I do not see how the State of Montana can call into service one who is an alien, although he has determined in his own mind to become a citizen of the United States. There is another objection raised which let me submit to the gentleman from Silver Bow. Every man, woman and child born within the jurisdiction of the United States is a citizen. This limitation is between the ages of eighteen and forty-five years Now, he provides in that that all male citizens shall be subject to military duty between those ages; but his amendment is in reference to those who may declare their intention to become citizens. Now, suppose, sir, that a woman, as sometimes happens in this country, declares her intention to become a citizen? I hardly think that would then be the correct thing.

Mr Burleigh of Custer: Mr. President, I think the bill as it reported from the committee on military affairs is just exactly right, and I do not believe that any amendment would benefit it, but rather injure it. It seems to me it should be adopted just as it came from the hands of the committee.

Mr. Merriam, of Missoula: I desire to offer an amendment to the section.

The President: The gentleman from Missoula desires to offer a substitute for the amendment offered by the gentleman from Silver Bow.

Mr. Knowles of Silver Bow: Mr. President, I have no doubt but that the State of Montana may have authority to call out—(interrupted)

The President: The Chair would state to the gentleman from Silver Bow that there is an amendment now offered.

The Clerk read the substitute for section 1 offered by the gentleman from Missoula (Mr. Merriam) as follows "All able-bodied male inhabitans of this State between the ages of eighteen and forty-five years who are citizens of the United States, or who have declared their intention to become such citizens, shall be liable to military duty in this State."

Mr. Merriam, of Missoula: I move the adoption of the substitute.

The motion was seconded.

The President stated to motion.

Mr. Knowles, of Silver Bow: I am not sure that that changes the meaning of the amendment that I offered. It seems that all residents, who are citizens of the United States, or who have declared their intention to become such, shall be subject to military duty; and as I understand, the committee upon the subject of citizenship will report every person who is a citizen of the United States to be a citizen of the State. Now, my object in having persons subject to military duty who have simply declared their intention to become citizens of the United States and who reside in the State, is, that we have quite a large population of that kind, and the further fact that where they have declared their intention to become citizens of the United States and are residing with us, they are identified with us; they are supposed to have the same interest in enforcing the law that we have

Mr. Maginnis, of Lewis & Clarke: I wish to ask the gentleman right here, would he then consider it right to disfranchise those people, or does he intend that the right of suffrage should go with the liability to military duty?

Mr. Knowles, of Silver Bow: I do not understand that the right of suffrage should go with the liability to do military duty. Male suffrage is based upon the protection of rights that everybody, who is subject to law, should have some voice in enacting and in saying what those laws shall be—not based upon the liability to do military duty. There are a great many of us who are not liable to do military duty that yet have the right to military duty. All parties over the age of forty-five can vote, but they are not liable to military duty. There are certain sections of the country here in which there are quite a large number of persons who reside here who have property here, and who have simply declared their intention to become citizens, and notably in the section in Missoula where the gentleman who offers this substitute, comes from; and there will come times when it would be very proper and very convenient to have those persons able to perform military duty, and to be called out to do military duty. I am not unmindful of the fact that persons who have simply declared their intention to become citizens of the United States have done gallant fighting for the Government of the United States, and will do gallant fighting for the preservation of the law and order of this territory if called upon to do it, and I am not in favor of excluding them from performing military duty.

Mr. Stapleton, of Silver Bow: Mr. President, it appears to me that the question of suffrage has nothing to do with the objection to or rejection of this section. Now, this section provides, and all amendments thereto provide, that all citizens who are over the age of eighteen and under the age of forty-five, shall be subject to military duty. Now, those young men who are over the age of eighteen, and not of the age of twenty-one, are made subject to military duty, and yet they cannot vote; and if you say that because a man cannot vote therefore he should not be subject to military duty, you are neither making those under twenty-one subject to miliatry duty, nor those who are over forty-five. You should not allow them to vote when not subject to military duty. But I do not think one has anything to do with the other Now, so far as those people who have declared their intention to become citizens but have not carried that intention into effect, is concerned, they have property and families in Montana; they have their property and the lives of themselves and their families to protect, and they are just as much interested in repelling an invasion of any hostile force or the enforcement of the law, as long as their lives and property are protected by the law, as anyone else; it makes no difference whether they vote or not. The object of calling out the military force is for the purpose of protecting the lives and property of people, whether they vote or not; and therefore all people who are residents of Montana should be subject to military duty, for the very reason that they are called out to protect their homes, their lives and their property. And there is no reason why anyone who has become naturalized should not fight for the homes and property of the commonwealth. It appears to me, Mr. President, that it is eminently proper that every able-bodied male resident, whether he is a citizen of the United States or not, if he resides within the territory of Montana, that he should be subject to military duty as long as he is protected by the law. If he were not protected by the law, then I would say that he had no interest in enforcing the law, but so long as he is protected by the law it is his right and duty to enforce that law; and therefore I think they should be made subject to military duty.

Mr. Merriam, of Missoula: My object in offering this amendment as a substitute is simply to try to get every inhabitant of the country to fight for the country in case of necessity. Let him be a citizen, a full citizen, or a man who has declared his intention to become such, it makes no difference; or even if a man comes into the country and accumulates wealth, owns property, and individual interests; and is protected by our government, I claim also that those men should be called upon in case of necessity to defend the country. But nevertheless this substitute reads (the gentleman read the substitute), and I say that it is proper. You will notice in our statutes that all men who have declared their intention to become citizens have a right to vote. There was some difficulty in the Legislature about that, and I remember well also that my good friend, Judge Knowles, went to work in 1872 and called a special term of Court, for the purpose of giving those men who had declared their intention to become citizens an opportunity to take out their papers. I was one of them myelf. Every man who has declared his intention has a right to vote, and I do not see why if a man has a right to exercise all the privileges of citizenship, he should not be called upon in case of necessity to fight for the country. I hope this substitute will pass.

Mr. Whitehill, of Deer Lodge: That's exactly the point here, as the gentleman has argued If he has a right to vote then he is liable to be called upon for military duty. There is a difference of opinion in this territory as to whether a man can come into the territory and in three months become a full-fledged voter. Now I do not know whether I am in favor of that or not, and I say that we might as well either defer it until we have decided that, or take the question now in its full bearing, and if we decide it now we must be consistent. They ought to be considered together

The President The question before the convention is upon the adoption of the substitute of the gentleman from Missoula.

A division being called for, the vote stood, twenty-nine in the affirmative to twenty-nine in the negative.

The President: The motion is lost

Mr. Maginnis, of Lewis & Clarke Mr. President, owing to the death of a friend, I am obliged to be absent from the convention and I ask to be excused. Before I go I would like to put in this as a privileged resolution. (The gentleman sent the resolution up to the Clerk's desk.) and ask as a further privilege that it be referred to the Committee on Rules. I also ask that the Executive File be not brought up until my return. I ask consent to have this resolution read and referred.

The President: By unanimous consent the resolution of the gentleman from Lewis & Clarke will be read and referred.

The Clerk read the resolution of the gentleman from Lewis & Clarke as follows: "Amendment to the Rule Resolved that when the committee of the whole makes its report, that the same shall be read as a whole; then the vote shall be taken upon the amendments recommended by the committee, and when these are disposed of, the report shall be submitted for adoption, rejection or recommittal as a single question."

The President: This will be referred to the Committee on Rules. The question now is on the amendment offered by the gentleman from Silver Bow, (Mr. Knowles)

Mr. Knowles, of Silver Bow: I call for a division.

The vote was taken and resulted in a vote of twenty-eight in the affirmative to twenty-nine in the negative.

The President The motion is lost. The question now recurs upon the original motion of the gentleman from Deer Lodge. The Clerk will read the amendment.

The Clerk read the amendment

Mr. Hickman, of Madison: Mr. Chairman: I think the amendment was accepted by the gentleman who moved the original motion.

The President: The amendment then is lost, as it was accepted by the gentleman from Deer Lodge (Mr. Reek).

The President The question is now upon the report of the committee.

Mr. Hershfield, of Lewis & Clarke: I would like to introduce an additional section.

The President· The gentleman from Lewis & Clarke offers section 6 on military affairs. The question before the convention now is upon the section No. 1, the amendments having failed.

Mr. J. K. Toole, of Lewis & Clarke· I understand, Mr. President, that these sections are deemed adopted unless they are amended?

The President· The gentleman from Lewis & Clarke (Mr. Hershfield) offers an additional section, as follows:

The Clerk read: "All inhabitants of this State of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, shall be excused therefrom but upon such conditions as shall be prescribed by the Legislative Assembly."

Mr. J. K. Toole, of Lewis & Clarke. I suggest that is not in order until we are ready and have disposed of Section No. 5.

The President Everything has been disposed of now as the Chair understands it. The various sections were passed, and the Proposition was about to be placed upon its final passage when this reconsideration was had. The question now is upon the adoption of this resolution as presented by the gentleman from Lewis & Clarke

Mr Hershfield, of Lewis & Clarke· I simply wish to test the sense of the convention in this matter. It seems to me that it has been entirely neglected. There is a very large population settled in the northern portion of our prospective State known as Mennonites, and those people have conscientious scruples against bearing arms. For that very reason they have left their own country, the southeastern portion of Russia. We have also another class of citizens who are conscientiously opposed to bearing arms, the Quakers. These men can be used for other purposes in time of necessity; there are different positions they can be placed in; and I think that a section of that kind especially in view of the large immigration which we expect to have of that class of people, the Mennonites—I think it would not only be satisfactory to them but would also encourage a larger number of those people in settling among us.

Mr. Burleigh, of Custer: I regret exceedingly to say that I am compelled to differ from my learned friend in regard to excepting the Mennonites and Quakers. I have no objection to leaving it with the Legislature to provide the conditions upon which they shall be released from military duty, but I will certainly require each man to send a full fledged man to the front as substitute. I have known some of those people. There are no greater money making people in the world, and while they are industrious, Godly people, they are the greatest money makers and scouters that I have ever known, from anything like duty. They have even been down in our country and fooled a lot of us fellows; and while I don't think they are worth a continental as would-be-soldiers, they accumulate more money than any people in the country, and I would require each and every one of them to send a brave substitute—either a brave Irishman or German—who is willing to fight for his country. I don't want to except any one, I don't care whether he is a Quaker or not. We know these Quakers are very good fighters. We have heard of the Quaker who stood with his eye-glass on the field and said "Friend, I do not wish thee nor the enemy any harm, but if thee want to hit him, hold thy musket a little lower". I want to lay down the rule here that every man who enjoys the blessings of Government shall in time of peril shoulder his rifle and go to the front; if he is too big a coward to go, put him in the trenches or somewhere else; but I am not in favor of excusing him on account of his **con-scien-tious** scruples, or on account of any dislike he may have for the smell of powder or the whizz of the bullets.

Mr. Eaton, of Park: On behalf of the Committee on Military Affairs, I beg to say that that Committee considered this question and decided that they would recommend that the matter of exemption be left entirely to the Legislature, and that they would so report. Section 1 reads "Except such person as may be exempted by the laws of the State or of the United States". That was the expression of opinion in the Committee, and I think it should be left in that condition.

Mr. Hershfield, of Lewis & Clarke: I think probably I have omitted to examine thoroughly the report of the committee, as I should have done, and I think that the statement made by the Chairman on Military Affairs probably covers the intention of my resolution. Therefore I shall wtihdraw the resolution if I may do so in order.

The President: The gentleman withdraws the resolution. The question now recurs upon the adoption of file No. 2 on Military Affairs. If there be no objection it will be placed upon its passage. The ayes and noes will be placed upon the journal.

The vote stood as follows:

Ayes: E. D. Aiken, W. M. Bickford, J. F. Brazleton, Peter Breen, S. R. Buford, W. M. Bullard, W. A. Burleigh, A. F. Burns, A. J. Burns, Edward Burns, J. E. Callaway, Edward Cardwell, B. P. Carpenter, Milton Cauby, W. A. Chessman, C. E. Conrad, Walter Cooper, T. F. Courtney, A. J. Craven, W. W. Dixon, Wm. Dyer, Geo. O. Eaton, Wm. T. Fields, Chas. S. Hartman, Henri J. Haskell, L. D. Hatch, L. H. Hershfield, R. O. Hickman, S. S. Hobson, J. Hogan, A. R. Joy, Thomas Joyes, J. E. Kanouse, W. J. Kennedy, Hiram Knowles, C. H. Loud, L. A. Luce, J. E. Marion, Chas. S. Marshall, Wm. Mayger, C. R. Middleton, Samuel Mitchell, Wm. Muth, Wm. Parberry, W. R. Ramsdell, G. J. Reek, J. C. Robinson. L. Rotwitt, J. E. Rickards, F. E. Sargent, Leopold Schmidt, G. W. Stapleton, Joseph K. Toole, J. R. Toole, Chas. S. Warren, W. H. Watson, H. R. Whitehill, G. B. Winston, A. C. Witter and Mr. President—sixty.

Noes: None.

The Chair announced the vote:

The President: The article on Military Affairs, File No. 2, is now adopted as a part of the Constitution of the State of Montana. If there be no objection it will be referred to the Committee on Enrollment.

Mr. Hershfield, of Lewis & Clarke: Mr. President, I would like to be excused for the day as I am anxious to attend the last right and services of a respected friend deceased.

The President: If there be on objection the gentleman from Lewis & Clarke will be excused for the remainder of the day. We will pass to the consideration of General Orders No. 11.

Mr. J. R. Toole, of Deer Lodge: Mr. President, I move that the convention resolve itself into a Committee of the whole for the consideration of General Orders

The motion was seconded.

The Chair put the motion and the same was declared carried.

The President: The Chair will appoint the gentleman from Lewis & Clarke, Mr. Carpenter, as Chairman of the Committee of the whole.

IN COMMITTEE OF THE WHOLE

Mr. Carpenter, of Lewis & Clarke, in the Chair.

Committee was called to order.

The Chairman. The Committee will take up General Orders No. 16, Proposition No. 17. Report of the Committee on Education.

Mr. Rickards, of Silver Bow. Mr. Chairman, I have the honor of being Chairman of this Committee but have been quite ill for several days and have not been quite able to give the matter the attention I would like to. I would therefore like to have the committe of the whole take up some other matter and postpone the consideration of this report for some future time I will therefore move that this be passed for the present. I have not any preference for any other matter.

The motion was seconded.

The Chair put the motion and the same was declared carried.

The Chairman, what is the pleasure of the Committee?

Mr. Craven, of Lewis & Clarke: If I am in order I move you that we take up General File No. 5, Resolution No. 4.

The Chairman. The motion before the house is to take up General Order No. 5, which is Resolution No. 4 introduced by Mr. Watson of Fergus, and reported back by the Standing Committee on Printing without recommendation

Mr. Watson, of Fergus: Mr. Chairman, I feel very much disposed to second such a motion if it is made, but I hardly feel ready to go into it myself. Still I will do so if it is the pleasure of the convention. The report made by me has not been printed.

The Chairman. The Chair understands the rule to be that this proposition or Resolution should be taken up in connection with the report of the Committee of which this was a dissenting or adverse report.

Mr. Watson, of Fergus: Mr. Chairman, that is very true, but the whole of the report of the committee is stated in this General File. It is simply not recommended, and I asked the privilege at the time of introducing a minority report, and did so, for the sake of bringing it before the house at the proper time.

The motion of the gentelman from Lewis & Clarke was seconded.

The Chairman. The Chair understands the motion made by the gentleman from Lewis & Clarke to be to take up Proposition No. 5, which is Resolution No. 4, in regard to printing General Laws. The resolution was introduced by Mr Watson of Fergus.

Mr J. K. Toole, of Lewis & Clarke. As I understand, by the action of the convention, all of these minor resolutions are to be considered in connection with the report of the committee having charge directly of that subject. As I understand it, that would be a matter which would properly come up for consideration when the report of the Committee on Legislative Departments was being considered, and I make that point of order

The Chairman, The Chair understands that it has been decided by the convention that these independent resolutions, reported favorably or adversely in connection with the reports of committees, should be taken up and considered with those reports of the standing committees. The Chair is informed by the Clerk that this report came in with the report of the Printing Committee, and that it was not a report of a standing committee in reference to any proposition to be embodied in the constitution. This report, which is an adverse report, does not seem to be a report adversely upon any proposition to be embodied in the constitution, but a report in reference to some action to be taken independent of that

Mr. Watson, of Fergus: If the Chair please I think the Chair must be mistaken. The proposition was introduced by myself and referred to the Printing Committee and was reported adversely.

The Chairman: This seems to be an unusual question. The Printing Committee, as the Chair is informed, has made no report of any proposition to be embodied in the constitution. If the Chair is in error the Printing Committee will correct me. As the Chair is informed it was in reference to some other matter. With that report was the minority report on the resolution offered by the gentleman from Fergus, which had been reported without recommendation.

Mr. Conrad, of Choteau. Mr. Chairman, I think the trouble was that the resolution was referred to the wrong committee. I imagine that it should have been referred to the Legislative Committee—this proposition to have the laws enacted by the Legislature published in every paper in the State—and it was referred to our committee and we simply referred it back without recommendation. I think the proposition should have gone to the Committee on Legislative Departments.

The Chairman: This report of the minority of the committee is not with reference to any proposition to be embodied in the constitution, but in reference to a resolution which the Chair will set forth for the information of the convention. The resolution offered by the gentleman from Fergus, was that the committee on Printing be instructed to consider and report to the convention for its action provisions which shall secure by publication to all of the people of Montana a knowledge of the General Laws, passed by the Legislature. This was referred to the committee on Printing and reported back without recommendation. Upon that matter is the minority report. It seems to be on the General File, and these matters on the General File are referred to the committee of the whole. The Chair is of opinion that the committee of the whole has charge of this matter, although it is not in reference to any report.

Mr. J. K. Toole, of Lewis & Clarke. I think that matter involves two propositions—either that there should be a provision in the constitution that those laws should be printed somehow, or that the Legislative Assembly should provide for their printing—either one or the other. I therefore move that when the committee rise it report this proposition back with the report that it be referred to the committee on Legislative Departments.

The motion was seconded.

The Chair stated the motion and the same was declared carried.

Mr. J. R. Toole, of Deer Lodge, if in order, I move to proceed to the consideration of General File No. 6, Proposition No. 11, the report of the committee on Labor.

Motion was seconded and the same was declared carried.

The Chairman: The Committee now has under consideration proposition No. 11 of the Article on Labor, and with that are three separate propositions to be considered, which the Clerk will read for the information of the committee.

The Clerk read as follows: "Proposition No. 7 by A. R. Joy. Chinese Labor. July 7th, Received, read and referred to Committee 23 on Labor, reported back by the Chairman of the Committee on Labor to be considered in connection with Proposition No. 11, General File No. 6. Also Proposition No. 3 by Hogan, referred back in the same manner to be considered with Proposition No. 11, General File No. 6. Also Resolution No. 17, offered by Field of Park, referred back to be considered with File No. 6, Proposition No. 11.

Mr. J. R. Toole, of Deer Lodge. Mr. Chairman, I move we proceed to the consideration of the report of the committee.

The Chairman: The Clerk will read Section 1.

The Clerk read Section 1 as follows: "Section 1 A bureau of Labor and Industry shall be established, to be located at the Capitol of the State, which shall be under the management of a commissioner, who shall be appointed by the Governor, subject to the confirmation of the Senate, and shall hold his office for the same term as the Executive State Officers."

Mr. J. R. Toole, of Deer Lodge: I move to strike out the word "Industry" in the first line and insert "Agriculture" instead.

The motion was seconded.

The Chair stated the motion and the same was declared carried.

Mr. Luce, of Gallatin sent up an amendment to Section 1.

The Chairman: It is moved by the gentleman from Gallatin to amend Section one by striking out in line 4, the words "as the Executive State Officers" and insert in lieu thereof the words "of four years."

The Clerk read the section as proposed to be amended as follows: "A bureau of Labor and Agriculture shall be established, to be located at the Capitol of the State, which shall be under the management of a commissioner, who shall be appointed by the Governor, subject to the confirmation of the Senate, and shall hold his office for the same term of four years".

Mr. Luce, of Gallatin: The amendment contemplates the striking out of the words "the same term" My object is, Mr Chairman, to give the term, because if they were appointed by the Governor they could not hold the same term as Executive Officers.

Mr. Hogan, of Silver Bow: We had the same matter under consideration, and as we did not know what time the Governor would be elected and for what term, we put it in the Executive Officers. Now if we make this four years, it doesn't look reasonable to ask the Governor to appoint a man for a longer term than he is elected for himself. If it was settled that the Governor would be elected for four years, I think it would be easier to get at.

Mr. J. K. Toole, of Lewis & Clarke. I move to amend that motion by adding to it the words, "except as otherwise provided in this constitution"; so that if it be arranged finally that the first officer shall hold for the period of three years, then this officer may be appointed for the same length of time, so that he shall hold for the same term as the Governor.

The motion was seconded.

Mr Luce, of Gallatin: I accept the amendment.

The Chairman: The question before the committee is on the motion of the gentleman from Gallatin, subject to the amendment of the gentleman from Lewis & Clarke, which has been accepted, to strike out of the last two lines the word "same" and the words "as the executive state officers," and insert in lieu thereof "the term of four years except as otherwise provided in this constitution", so that the last two lines will read "subject to the confirmation of the Senate, and shall hold his office for the term of four years except as otherwise provided in this constitution."

Mr. Whitehill, of Deer Lodge I would like some one to give some information as to what are to be the duties of this office. I am very much opposed to creating an office that, it appears to me, will be nothing but a sinecure. I don't know what the duties are applicable to this office. I certainly do not understand what duties such an officer would perform after he has been appointed.

Mr J. R. Toole, of Deer Lodge: As a member of the committee that had this matter under consideration, I would say that I think in nearly every state in the union there is a commissioner of this kind. The United States also have an officer of this kind whose duty I believe it is to gather statistics in relation to the condition of labor, the rate of wages, the condition of manufactures, the condition of agriculture, the agricultural products throughout the country, etc. He is supposed to gather information that is useful in after years Often times Legislative matters are referred to his office, and by having a bureau of this kind it puts things in such shape that they can intelligently act upon any matter that comes before them involving the question of labor, agriculture, &c.

Mr. Burleigh, of Custer: Mr. Chairman, it strikes me, as my old friend Walker used to say, with the force of gun powder, that we can dispense for the present with a bureau of this character in this territory. I think the money would be better expended in trying to moisten the soil we have here under direction of some officer to be provided for by the Legislature. So far as the agricultural capacity of the country is concerned, it is pretty well understood by every one here, and with seasons like the present the less information we send abroad in regard to it the better it will be for us. I have no objection whatever to leaving it in the hands of the Legislature to appoint a commissioner, if they want to do it, but as to inserting anything of this kind in the constitution I believe it is out of place and will not be attended with any success. If there is a commission or bureau appointed, with three or five men, it will probably cost from three to five thousand dollars. In addition to that they will have to have a Secretary, which will cost $1500 more; they will have to have an office; where rents are high, as they are here in Helena, it will cost $1500 more; and it would run up after awhile to $25,000 a year. There may be a provision put in here to leave it to the Legislature to provide, if it is necessary, and whenever necessary, for one commissioner on agriculture. I do not believe it is politic to legislate in this way in a constitution.

Mr. Craven, of Lewis & Clarke: It occurs to me that this proposition that we are now considering, No. 11, should be considered with Proposition No. 15. It occurs to me that the same bureau can subserve the purposes intended by both of these reports. Section 1 of the Article we are now considering reads "A bureau of labor and industry shall be established" &c. Section 1 of Proposition 15 reads, "A bureau of agriculture, manufacture and commerce shall be established" etc.; and to bring the matter properly before the committee, in addition to the change suggested by the amendment now before the house, I move further to amend by inserting after the word "agriculture," which has been suggested by the gentleman from Silver Bow, in the first line, the words "manufacture and commerce."

The motion was seconded.

The Chair stated the motion.

Mr. Whitehill, of Deer Lodge: I also move to amend that by adding the words "mines and mining," for the purpose of statistics. I think that is quite as important as the rest.

Mr. Hogan, of Silver Bow: Mr. Chairman, I think it is entirely unnecessary and uncalled for in this constitution to define just exactly what this bureau or commission will have to do. We find that the head commissioner, Carroll E. Wright—that all the statistics he gathers and the immense labor he does is not defined. He reports all the different statistics of the country; that is his duty. I think that the word "industry" would include all the different trades of the state, and I think that would be sufficient. I don't see that it is hardly necessary to add all this to it.

Mr. Mayger, of Lewis & Clarke: I would suggest that the gentleman strike out the word "mining."

The Chairman: There are two amendments to the motion already before the house. The gentleman is in order if he has a substitute to the Proposition.

Mr. Mayger, of Lewis & Clarke: I just merely drew the attention of the gentleman to the advisability of striking out the word "mining," because when he speaks of mines he includes it all.

The Chairman: The question before the committee is the second amendment to the motion to amend Section 1, so that it will read as follows: "A bureau of labor, agriculture, mines and mining," &c.

Mr. Clark, of Silver Bow: Now, Mr. Chairman, as I understand it, we have arrived at the consideration of the question upon the last amendment offered by the gentleman to tack on to all those other matters the words "mines and mining" as the case may be. Now, it seems to me that this is too much of a hodge-podge. It would require a very versatile character to take the position of commissioner—to be familiar with all these subjects. The industries enumerated here embrace the principal industries of this territory, and it seems to me that we might separate these to better advantage, and if necessary, have a commissioner appointed or bureau established to take into consideration labor, agriculture, commerce and manufactures. That is quite enough for one man to do; I think it is too much for one man to do. Probably labor and agriculture would be quite enough for one man. Then commerce and manufactures would be quite a large range and present quite a field, and give a man a chance to exercise his faculties, it seems to me. Then mines—that is one of the greatest industries of this country. If we are to have a bureau of agriculture and labor and these other industries, it seems to me we should have a commissioner for mining in this country. But I am opposed mixing them all up and having one man to attend to them all Hence I am opposed to the amendment as offered by the gentleman from Deer Lodge.

The Chair put the motion on the amendment of the gentleman from Deer Lodge, and the same was declared lost.

Mr. Witter, of Beaverhead: Mr. Chairman, inasmuch as we have stolen a portion of the report from the committee on agriculture, we might as well proceed to steal the whole report, and I would offer a substitute to General File No. 14 and General File No. 6, or Proposition No. 15 and Proposition No. 11.

The Chairman: The Chair thinks that is not in order on the motion to amend this settion.

Mr. Witter of Beaverhead: I will withdraw the motion.

Mr. J K. Toole of Lewis & Clarke: Mr Chairman, I offer an amendment.

The Chairman: The gentleman from Lewis & Clarke, moves to amend the amendment, which is an amendment to Section 1, by striking out all of line 1 up to and including the word "established" and insert in lieu thereof the following, "the Legislative Assembly may provide for the establishment of a bureau of labor and industry."

The motion was seconded

Mr. J. K. Toole, of Lewis & Clarke: I just want to say a word in reference to that. It may become necessary for the establishment of some such an office as that, but I do not think at this time when we are forming a constitution that we ought to commence right at the beginning by loading it down with a series of new officers whose duties may not be onerous and whose compensation may be entirely out of proportion. I think it would be quite sufficient to leave the matter to the Legislative Assembly to provide for this officer if it shall become necessary, and I therefore move the amendment.

The Chair put the question on the amendment of the gentleman from Lewis & Clarke (Mr. Toole), and the same was declared carried.

The Chairman: If there be no further amendment to Section 1, the section will be considered as adopted and the Clerk will read Section 2.

The Clerk read Section 2 as follows "Section 2 The commissioner of labor and industry shall perform such duties and receive such compensation as may be prescribed by law, and it shall be the duty of the Legislative Assembly at its first session to prescribe such duties and compensation, and to pass such laws as may be necessary for the government, regulation and support, of such bureau."

Mr Burleigh, of Custer: I move to strike out Section 2.

The motion was seconded

The Chair put the motion and the same was declared carried.

The Clerk read Section 3 as follows "Section 3. That any person or persons convicted of a crime in the State of Montana, and while under sentence for the same, shall not be allowed to labor for any individual, company or corporation. Neither shall the State have power to enter into agreement or contract with any individual, company or corporation, to have convicts do any labor that will in any way compete with free labor."

Mr. J. R. Toole, of Deer Lodge: I offer an amendment to that section.

The Chairman. The gentleman from Deer Lodge moves as follows, to strike out section 3 and to insert in lieu thereof the following: "It shall be unlawful for the commissioner or other state officers of any penitentiary or other reformatory institution in the State of Montana to let by contract to any person or persons, or corporations, the labor of any convict confined within said institution"

The motion was seconded

Mr. J. R. Toole, of Deer Lodge: Mr. Chairman, the amendment which I have offered here is copied from the amendment to the Constitution of the State of Illinois, adopted four years ago, and while there may be some question in regard to this matter, I think there can be no doubt that this is the proper place to insert something of this kind, if it is believed that it should be done. When I happened to be a member of the Legislature at one time, not very long ago, there was a bill introduced for the contracting of the convict labor of this territory which passed one of the houses of the Legislature—it passed the council at that time and came very near passing the house also; and had it not been for the protest that was raised by the people of the territory of Montana and by the representatives in opposition to it, there is no doubt that the bill would have passed both houses and become a law I happened, sir, some time before to be employed as guard in the State of Tennessee. It seems to be a common thing in penal institutions to contract the labor of the convicts in them. It is opposed to all human principles and all semblances of humanity. It is a disgrace to any civilization. Even if a man is a convict of the lowest order, it is no argument or reason why he should be abused under such a system of abuse as reigns under the system of contracting. The people of these states where this system of late years has obtained have risen up and abolished it. I notice nearly all of the States, by provisions in their constitutions, or else by Legislative enactment, have prohibited the system of convict labor. I offer the amendment to this Article for the reason that when I was on this committee I could not endorse the whole of the article as reported by the committee I could not endorse it for this reason, that I believed it was against the principles of good government; I believed it was against the interest of the laboring men, although they asked this, or certain portions of it at least; I was not in favor of it for the reason that I believe that we are commencing at the wrong end of this question. I will not oppose any law or any enactment that would prohibit the system of contract labor in this country, but I differ with some of my colleagues on this matter. I take the ground that the cause of these agitations, if they may be called such, is not in the fact of an over-production of this world's goods, but in the fact of a wrong distribution. We are commencing at the wrong end of the matter. For that reason I offer this amendment, which will place the matter in such condition that the convicts may not be leased out by contractors but that under the direction of the State and under such laws as the Legislature may enact, there may be a provision for their employment, which I believe to be a wise and wholesome regulation. For that reason I offer this amendment and trust it will be incorporated in the Section of the constitution. It was adopted by the people of Illinois four years ago.

Mr. Burleigh, of Custer: I move to strike out the word "commissioner" and insert "warden or other person."

The Chairman: The amendment is a substitute for Section 3 and reads as follows: "It shall be unlawful for the commissioners or other state officers of any penitentiary or any other reformatory institution in the State of Montana to let by contract to any person or persons, or corporation, the labor of any convict confined within said institution." To that an amendment is offered as follows: "Strike out the word "commissioners" and insert "warden or other officer in authority." The question is now on the amendment to the amendment.

Mr. Middleton, of Custer: It occurs to me that we are here for the purpose of making or attempting to make a constitution for the people of Montana, and if I understand what that means, it is to make a constitution for convicts as well as for free individuals. There was an expression here upon the floor of the convention a few days ago as to the striking out of certain words in some other matter that was being considered, the nature of which was to indicate that punishment for crime should be reformatory and not vindictive. Now, I submit that these are matters that are proper and fair to come before the Legislature at any time, and unless limited by constitutional provision, the Legislature will have power and should have power either to provide by contract for the labor of these convicts, or by any other means whereby they can give them employment. To say that a man convicted of a crime, because he is sentenced to the penitentiary for five years or for ten years, or for life, shall be housed up and kept in some place where is is not permitted to labor for that length of time, seems to be inhuman and instead of being in the nature of anything reformatory, it is the most brutal character of vindictive justice. On the other hand it is pretended here that this does not prohibit the State from resolving itself into a barrel factory perhaps and putting those convicts to labor—manufacturing tubs or barrels, or perhaps overalls. But does it seem reasonable that that kind of thing should be done by a State? I came from the State of Minnesota, from Stillwater, where I was for five or six years. During which time there was in the penitentiary of that state from 350 to 500 convicts. The convict labor there was let to a large corporation—the Northwestern Manufacturing and Car Company. That company employed outside the convict labor citizens to the number of about 1500, and I have had occasion in my business relations to go frequently every week, and sometimes every day of every week, inside of the walls of that penitentiary; and the suggestion here made by the gentleman that the treatment by those companies or contractors of convicts was improper was something that I never saw nor heard of there. The men were guarded and looked after by the officers of the State. The convicts were treated and did the same character and kind of work that was done by citizens. Some of those convicts were overseers in certain rooms and departments. The company was engaged in a large, extensive and varied business, manufacturing almost all kinds of articles. Those men never complained. They said their treatment was the best. And if anybody will take and read the "Prison Mirror" published in the Penitentiary of Minnesota, they will see that the treatment not only on the part of the state officers but of the contractors for whom they have labored has been something they have never had occasion to complain of. Now by this Section, whether you adopt the original section or the proposed amendment, you practically provide that convicts shall be sentenced to absolute solitary confinement; that they shall not be permitted to do any kind of labor, because it does not mean anything else, for fear that the labor those convicts should do might in some way come in contact or compete with free labor. It does not seem to me that we want to put anything of that kind in the constitution. When the time arrives in the State of Monana, if ever it does, that the Legislature may deem it wise to make provisions of this kind, which they can do unless prohibited by this constitution, let them do it. But that time certainly has not arrived, and it does not seem to me it is starting out on the right track. I, for one, am opposed to any kind of a law or constitution that would say that a state shall not have the right to make such provision by Legislation as it may see fit for the working of its convicts I would rather be in favor of putting a provision in the constitution compelling the State to make some reasonable provision whereby convicts may be permitted and have an opportunity to labor. Take a man and put him in a penitentiary for two years even, or for one year, and not permit him to even exercise his muscles—and I presume they would close him up in a 2x4 cell if they could—and what kind of a man will he be when he comes out? Is that year in the penitentiary intended to reform him or is it intended to ruin him for life? It seems to me that in the interest of humanity, and common sense, and common justice, that this is the most vicious character of Legislation instead of being a wholesome provision that should be inserted in the constitution. I am opposed not only to the section itself but to the amendment, for they are practically one and the same thing.

Mr. Fields, of Park: I have listened with close attention to the remarks of the gentleman from Custer. I first saw the light of day in the City of Joliet, Illinois, where a State Prison is located, and I know from what I have seen there that convict labor is an injury to the free laboring man outside of the prison. The gentleman from Custer tells us he is familiar with the state of affairs at Stillwater, Minnesota, claiming a car company down there employs six hundred convicts, I believe, and 1500 laboring men, all working shoulder to shoulder. I think that the people are putting a laboring man far below his level when they put him out to work with a felon that has been convicted of crime. Those men are employed by companies. They do not in the first place receive the remuneration for their wages that the free laboring man does and I will warrant that if they had the additional 1500 men—if they had the additional 1500 prisoners there that not one of the 1500 men would be working in those car factories at Stillwater Now I do not propose, nor will I ever sanction any law that would stop or prohibit a prisoner from doing something in prison, but I will always uphold and stand by the conviction that convict labor should not be put on a level with the free labor outside of prison walls; and I believe it is wrong—wrong in the extreme that a man, who under the laws and constitutions of his country is a citizen, should be put in contact with and compelled to work by the side of a convict. I think it is out of the question. I shall never uphold it. I do not think it is proper nor right There has been a great deal of injustice done in that way. I know that in Tennessee that the convicts were given out for grade labor for thirty cents a day, when laborers were getting $2 and $2 50 a day; and I think it is, speaking even moderately, a high handed outrage to put those convicts on a level with men who have lived up to the constitution and the laws of the state and of the United States. I am opposed to the whole system.

Mr. Hogan, of Silver Bow: Mr. President, I have listened with considerable attention to my friend from Custer in speaking about convict labor, and the enormous evil it would be to the community to prevent those men from working. I presume from what that gentleman has said that he has never read the correct account of the men that have had charge of those convicts, giving the amount of labor that is given out in those prisons. We find in some states that there are certain industries of which from 46 to 60 per cent of the products thereof are manufactured in the prisons and placed out on the market to compete with people that are free. Does this convention think that it is right or just that a man that has to work for days wages—the only way he has to support, raise and educate a family—that he should be placed on a level, either physically or in the open competition of the markets of the world, with those convicts? Should my friend who has so eloquently argued about preventing the convicts from working like to be placed on a level with those men? I think not, and I think that those people who have to work at work that convicts do are worthy of the same consideration from us as any other person. Now I claim that instead of the work that convicts do being a benefit to the community, it is an injury. I claim that there is so much work to be done, and the fact of the matter is there are more people looking for work than there is work to be done, and the amount of work that is done in the penitentiary is just throwing that many people out of work that they absolutely need in order to secure a living. The consequence is this man, who may be a respectable, honest and worthy citizen must actually descend to theft if he can do no better. Then he is placed in jail and gets the same as the other convicts do. Now we can take the history of other nations and we find in a great many places that convicts do not work, or at least when they do work they are put to work at something that is not remunerative; whatever they produce is consumed in jail, and not placed on the labor market to compete with the labor of honest men. We find in several of the states where convict labor was in vogue of late years, that the people have found out the necessity of preventing them from competing with honest men. Now I claim that in the state of Montana at the present time there are not a great many convicts, but I think it would be a good thing to insert in the constitution some clause that would prevent the same things happening here that have happened in other places—in Alabama for instance, at Birmingham. You will find that the convicts are treated there worse than mules, and if we let this system creep in here we have no assurance but that the same crying evils will exist here at no distant day I certainly would support the original section, because I do not think it is right that any man who is not a convict should be compelled to compete with a man who is a convict.

Mr. Brazleton, of Deer Lodge: I do not expect to be in the penitentiary very soon, but it seems to me that it resolves itself into this, that somebody is going to be inconvenienced, whether it shall be the convicts or the working man seems to be the question. If that is so, somebody is going to get the worst of it, and I think so long as there is no law that compels a man to go to the penitentiary, let them stay out of it or suffer the consequences.

Mr. Breen, of Jefferson: Mr. Chairman, I have come here as the representative of the laboring man, pledged to no political party, as you all know. I have kept very quiet here, and so have the gentlemen from districts 11 and 21, which include Jefferson County; but this is a little too much. The gentleman from Custer gets up here and he claims it is not interfering with the rights of the laboring man to place 1500 respectable free men by the side of convicts and compelling them to earn their daily bread in the company of degraded criminals. When a stranger goes along there at Stillwater for instance, how is he going to know the convicts from the free men unless by their dress? And has the gentleman from Custer no respect for the feelings of his honest fellow men? Does he think they have no feelings, or does he suppose he monopolizes all the finer feelings of mankind in the small compass of his own breast? How must men feel when they have been degraded to the level of convicts and subject to the same espionage as the convict? Another thing. If we wish to reform the convict, in correcting the right or as a matter for his own good, do we wish to have every passer-by scrutinize him with critical gaze? I will ask the gentleman from Custer, if he had been there in that gang, how he would like to have a thousand people a day size him up, and after he had come out of there meet somebody face to face, that had seen him working with that chain gang at Stillwater? Here is this question of the constitution, which is supposed to guarantee justice to all classes of people, but it says that the convicts must be made to work. Why should they be made to work? To exempt the tax payer from contributing towards their support? This gentleman who hails from Custer. if he is elected to the legislature again—a thing which I hope will not happen—he will introduce a bill to establish a shoe factory or something of that kind down in Deer Lodge. They will manufacture shoes and sell them throughout Montana and in that way pay the expenses of convicts. Now which is it, the people of Montana or the shoemakers that are supposed to support the penitentiary of Montana? That is one thing I wish to know. In the United States, on January 1st, 1877, we had forty-five thousand and some odd hundred convicts, engaged in labor that competed with free labor, and allowing for the usual allowances, it was estimated that there were thirty-five thousand and some odd hundreds thrown out of employment by this labor system; and in the United States there is estimated to be close on two million idle men without employment. It is estimated that we have four thousand idle men in Montana We have a hundred and fifty convicts that we have put in the penitentiary because they were a curse to society, and of course it is too bad to keep them in idleness. We must throw out another 150 idle men in our cities by employing that 150 convicts. Then in the city of Chicago, at the present time, we have forty thousand idle people, as estimated on the first day of June. These are not to be taken into consideration in order to Their cries for help and their efforts to obtain employment in order to relieve their starving families are to be lost and wasted upon a government instituted for the purpose of the happiness of all, while these poor convicts, incarcerated behind the prison walls, in order that the anxieties of their minds may be relieved, must be put to work at some employment that will come in direct competition with the more fortunate laboring men of the country. In Montana, if our convicts are to be contracted out. what is to hinder any man that runs mines from hiring these convicts, and working the Anaconda, the St Lawrence or any other mine that would employ that number of men? And who is it—is it the tax-payer or the miners in Butte that are thrown out of employment? I would like to ask the plain question whether the people shall support the convicts or not? If we wish to go down to the bottom of this thing, according to the commissioner that was appointed by the United States to examine into the matter, we find that the tax on property, necessary to support the whole convict population of the United States would not amount to more than thirty-nine cents on the thousand dollars; and under those circumstances it is hardly necessary, considering the consequences to the working classes of this country, that they, instead of the tax-payers generally, should be compelled to support the criminal classes, made up sometimes of what are supposed to be the very best class of citizens. What we wish to guard against particularly is the employment of convict labor in any branch of industry that will allow them to compete with honest men. Now I do not see the necessity for all this discussion in any matter that concerns the protection of the laboring man. I have been out of employment in this territory several times, and I do not want to be placed in the same position again this winter, simply because my employer may see the advisability of employing labor that he can get much cheaper than I could afford to work for. I hope this section will be adopted. I do not wish to see the convicts confined in their cells, continuously without work, nor do I see the necessity of it, but that they shall be supplied with machinery which will enable them to do the work of 200 or 300 men, that I do not approve of. It may be well enough to employ them and brand their goods as convict-made goods, and then employ them just enough for their health and for the purposes of exercise.

Mr. Dixon, of Silver Bow, sent up an amendment, which the Clerk read as follows: "Strike out section 3 and insert, instead, as follows 'Section 3. The labor of convicts shall not be let out or hired by contract to any person, co-partnership, company or corporation The Legislative Assembly shall provide by law for the working of convicts, for the benefit of the State, but in such manner that the labor of such convicts shall not come in contact with free labor."

Mr Dixon, of Silver Bow: I desire to say that that is mainly the provision in the constitution of California, except the last portion of it in regard to free labor, and it seems to me that it really covers the ground which we are trying to get at. Certainly, convict labor should not be contracted out. That seems to be the experience of all states. And still convicts should be employed It is better for them and it is better for the community. But they should not be employed under any contract, or in such branches of industry as will come in contact with free labor. I do not believe that the spectacle of free men, guilty of no crime, seeking work, and compelled to meet the competition of convicts in the penitentiary, is altogether an edifying one. I offer this resolution as the true solution of this proposition, and I think it covers the ground that the members of the committee have recommended, as well as some of the grounds that have been touched upon by some of the gentlemen in debate.

The Clerk read the Amendment as offered by the gentleman from Silver Bow.

Mr. Bullard, of Jefferson: I will not detain the committee but a moment. I think this amendment offered by the gentleman from Silver Bow covers the ground exactly and completely, and I shall support it heartily; and to save the work of this committee I hope that the preceding amendment will be withdrawn and this one accepted in lieu thereof. This is the point that we have been working for in committee, and I think the committee will heartily support it. I for one shall do so.

Mr. J. R. Toole, of Deer Lodge: I accept the amendment offered, and I will take one minute in reply to a few remarks made by the gentleman from Custer. I would advocate the adoption of this report on the ground that it is in accord with the rest of the constitution. Now as I have said, we have had no experience of this kind. The State of Tennessee has had experience with this question, and the people there have come to the conclusion that it is inhuman and vindictive in the greatest degree to put these people up to be bought in by contractors. On that ground I vote in favor of this proposition. I have seen a man in one instance so wrought up that he would sacrifice his life, so driven to desperation was he by his surroundings and by sickness and disease, for which he had no redress until his term was served out. I advocate the adoption of this clause in the constitution, and I hope it will prevail.

Mr. Rickards, of Silver Bow: This problem before us has occupied the minds, and the best minds, of statesmen and philanthropists for a number of years, and I have not yet had any intimation that it has ever been settled to the satisfaction of all persons concerned, and I have very little doubt that after this convention has adjourned we will leave it in the same unsettled, unsatisfactory condition. I am as much opposed as any one can be to seeing the honest artisan laboring shoulder to shoulder with convict labor; I am as much opposed as any one can be to maintaining our convicts in idleness: I believe it is wrong not only to them but wrong to the taxpayer who is called upon to support them in idleness; and when their term of service has expired they come out a burden, and more than a burden to us. Now, gentlemen, I do not believe, with all due respect to Mr. Dixon, that this amendment offered by him, covers the ground, and for that reason I am in favor of leaving this entire proposition in the hands of the Legislature. It does not seem to me that it is our province to attempt to legislate on this question. Now, I would like to ask Mr. Dixon, or any one else, how convict labor can be employed by the State without coming in competition either directly or indirectly with all honest free labor. We will have for instance in a few years to build an additional penitentiary, or it may be that in a very short while we will have to build an addition to the present penitentiary. That may give employment to scores of honest mechanics who will need that labor, but shall we say to this legislature or to that legislature, that they shall not provide for those convicts erecting that building? I say to you that if they erect it by their own labor they come in competition with the honest mechanics. Now I do believe that it is safer and better and wiser, if you will let me use that expression, to leave this entire matter in the hands of the Legislature. Two years ago I had the honor to be a member of the Territorial Legislature, and we wrestled with this question, and I suppose future Legislatures will wrestle with it; and I believe that if we attempt to adopt either the original section or any amendment that has been offered in lieu thereof we will act unwisely; and therefore I shall vote—and I hope I am understood—I shall vote against the adoption of the original or any substitute that may be offered in lieu thereof.

Mr. J. K. Toole, of Lewis & Clarke: Mr. Chairman, I am opposed to the adoption of this amendment, and I think very much with the gentleman from Silver Bow (Mr. Rickards). I would like to know how it is that the Legislative Assembly, or any other assembly, shall be able to provide that these men shall be permitted to engage in work for the benefit of the State and at the same time not come in conflict with free labor. It may be true, sir, that they will be able to put them at work at such employment as might not come directly in conflict with the free labor of the Territory of Montana, but it nevertheless is true, that if they are engaged in any industry that is useful and beneficial to the State that they will come directly in conflict either with the free labor of the State that will be necessary for the production of those articles, or in conflict with free labor somewhere in the United States. So far as I am concerned, sir, I believe that the State is under no obligation so far as its convicts are concerned, especially those convicted of felony and sent to the penitentiary, except to provide for them in such a way as shall be in the interest of a proper and healthful condition while they are there. I would, sir, rather than bring them in conflict with the free labor of the State or the United States, see to it, sir, that they were permitted and compelled to engage in nothing more than in the practice of the manual of arms; that they might be permitted to do that or some other thing that would be necessary for their health and the proper physical exercise necessary to secure it. But I am unwilling, sir, so far as my vote is concerned, to adopt this amendment or anything which is less restrictive in its character than the one which is presented in this article by the Committee on Labor.

Mr. Luce, of Gallatin: I have but one word to say, sir, or perhaps two. I think that by this amendment presented by the gentleman from Silver Bow (Mr. Dixon) that there is an obligation put upon the Legislature of the State that is impossible of being carried out—that is if I understand the amendment, that the Legislature shall provide for certain work to be done by these convicts that shall not conflict with free labor. That I conceive to be an impossible task. As the two gentlemen who have preceded me have well said, you cnn imagine nothing in the way of labor that produces anything or that makes anything that will not come in conflict with free labor Take the illustration of the gentleman from Silver Bow (Mr. Rickards), the erection for instance of a State House. Now, that perhaps might be erected by mechanics in the penitentiary, and at the same time just so many free laborers of the same skill or belonging to the same class of mechanics would be cut out of employment; and I conceive that this Section 3 is infinitely better than this proposition that is before the committee now. The last clause of it provides "neither shall the State have power to enter into agreement or contract with any individual, company or corporation to have convicts do any labor that will in any way compete with free labor." There you have said all that this amendment of the gentleman from Silver Bow says, and you do not undertake to impose upon the Legislature the impossible task of providing labor for the convicts that will interfere or compete with free labor. I would prefer Section 3 as it is printed.

Mr. Courtney, of Silver Bow: After all that has been said upon this subject it does not seem to me that there is very much to say, but this, however, I will say, that it has been a well recognized fact that the laboring people of this country have suffered very much by being put in competition with convict labor; and I feel now that this is the opportune time to raise this question. The gentleman who preceded me said that he was a member of the Legislature two years ago and wrestled with this question but they accomplished nothing I am in hearty accord with the remarks made by the gentleman from Lewis & Clarke. I feel, however, that there is a feeling rife in the convention that labor is necessary for these convicts, that it would be exceedingly inhuman and cruel not to give them something to occupy their time or divert their minds. I would be perfectly satisfied to have them engaged at something in which they would not come into competition with the laboring man. I certainly very much differ from the gentleman from Custer in my views in regard to placing laboring men and convicts side by side, and I also differ with him in the fact that although we may be here to frame a constitution for convicts I think it is only to see that they receive proper reformatory punishment for their transgressions. Now then, this substitute proposed by Mr. Dixon, as I understand it, I think will provide in a great measure to exert the harm that usually follows the competition of convict labor with free labor Anything that will do that will certainly have my hearty accord, and if I thought for a moment that we could pass the section as proposed with the labor bureau clause, I should certainly vote for it; but as the section proposed by Mr Dixon comes up first I shall not miss the opportunity to give my vote in the direction of making a distinction between free labor and convict labor.

Mr. Whitehill, of Deer Lodge: I would like to hear from the gentleman who has introduced this substitute. If he has in mind any manner of labor by which these convicts can be engaged so as not to compete in any way with free labor, I would like to know what it is. My idea is that if these convicts are employed it should be in some useful labor. This idea of putting convicts to turning cranks, piling up bricks and tearing them down again, I do not believe in. The greatest relief to the human mind which has become morally degraded lies in the consciousness of knowing that what we do is useful, and that some benefit will result from our labor, and under this substitute introduced by the gentleman from Silver Bow, I do not understand what labor they can provide for the convicts to do.

Mr. Stapleton, of Silver Bow: I am decidedly opposed to farming out convict labor and bringing it in competition with the honest labor of the country, but I am also decidedly in favor of convicts working at some useful employment. It appears to me that the trouble is not in having them work, but the trouble comes when you ask the question what will we do with the products of their labor. For instance, I believe that every convict, while he should not be brought into competition with honest labor, should be compelled to learn and follow some useful calling. I believe that nine out of ten convicts are placed in the penitentiary for the reason that they have never been taught to work and never been taught a trade and have never been taught enough to make them useful members in the community of which they live, and I believe that every man in the penitentiary who is placed there for a year or more should be taught some useful occupation; the first care that should be exercised over him should be to teach him some useful trade or occupation, so that when his time has expired and he is turned into the world again he will not be turned into the world as a hoodlum, all the time thinking of vice and folly, and thinking what he will do when he gets out, but that he will be ready to follow some honest, industrious pursuit; and if he has learned some trade, when he gets out he has got something that he can make a living at. You give him a chance. You do not throw him back again among the criminal classes, but you give him a chance to go among honest, upright people and earn his living the same as they do. But it seems to me that the great question arises and the whole difficulty lies in the problem of what shall be done with the product of his labor while he is in the penitentiary. There are always poor people enough, and if you establish for instance the business of manufacturing shoes in the penitentiary you diminish the chances of those poor people who are compelled to earn their living in a corresponding degree. It appears to me for that reason that the question should be left to the Legislature of what shall be done with the product of the labor of the people in the penitentiary. There certainly is a way to the solution of this difficulty. You might for instance have these convicts manufacture shoes and other ware, and after you have paid for the material there will always be enough of poor people and paupers, and the children of widows, and there will always be orphans enough and people of that kind, to wear out those shoes That would not come in competition with anybody. Then you might put the matter in the hands of some officer, or somebody, so that he might seek out the most deserving and give these shoes and other ware to them, or sell them at such a small price that they could afford to buy them. I do not believe it is the matter of the manufacture but of the disposition of the products of their labor. I believe that the products of their labor should be so disposed of that they would not come in competition with the products of the labor of honest men; and for that reason I am not in favor of this amendment or of this section at all; I am in favor of leaving this entire matter, except so far as providing here that convict labor shall not be farmed out, to the Legislature. Further than to say that this labor shall not be farmed out I do not think we ought to go in this convention. I am in favor of leaving everything beyond that to the Legislature. It may be well enough to provide that their labors shall not come into competition with honest labor, but that it shall be a help to them and their families whenever they are unfortunate, and in that way the labor of the convict will become a blessing instead of a curse to the laboring people.

Mr. Dixon, of Silver Bow: Mr. Chairman, this resolution, or the substitute, embodies, I think, two propositions; the first is to prohibit the contracting out of convict labor; that I believe all gentlemen here are opposed to and certainly it is an evil both to the convicts themselves and an evil as it comes into competition with free labor. Now, the substitute and the original report both provide for that. Then there is another matter in reference to the employment of convicts, providing that they shall be employed by the State but that they shall be employed in such manner that their labor will not come into competition with free labor. Now it is said, how can they be employed in that way? Why a number and variety of ways suggest themselves to me. They may be employed in building the walls of prisons; they may be employed in other public works, as was suggested by the gentleman who has just taken his seat—works that the State would not undertake if it involved the necessary expense of paying for them—the improvement of water power, &c. I do not intend to argue this question at length. The important thing I desire to get at is that the working of convict labor by contract shall be abolished, and that whatever labor is done by these convicts shall be for the benefit of the State and shall not come into competition with free labor Now we have got to leave something to the Legislature, and all we ought to do is to place the necessary restrictions upon their enactments. We cannot provide for the whole system of the Government of the penitentiary and for the employment of the labor of convicts in this constitution, but we can bind the Legislature as to what they shall do. Now all that my friend from Silver Bow desires there can be done under this section, but we must leave some discretion to the Legislature, and while I desire to restrict them against contracting out the labor of the convict, I am willing to leave it to their discretion as to what they shall be employed in, subject only to the restriction that they shall not come into competition with free labor. I go to this extent, that if the Legislature cannot find any employment for those convicts that will not come into conflict with free labor, then I say let them remain idle. I am not one of those who have so much sympathy with convicts and persons convicted of crime as has been expressed in some of the debates upon this floor. If those convicts cannot be employed, or if the only way to employ them is to bring them into competition with free labor, then let them remain idle rather than bring them into competition with the work of the honest, industrious, unremitting and innocent toilers of the land. (Applause.)

Mr. Middleton, of Custer· Mr. Chairman, I do not believe that the gentleman from Silver Bow has satisfied any man in this house that he has explained, in any way, shape or manner, where, if his substitute were adopted, it would be in the power of the Legislature to give the convicts one single minute's work Now the matter of building a penitentiary is the very first thing, perhaps, that the laboring men and artisans would have the right to object to. That is a character of employment that is intended, perhaps, for the persons fitted for it—citizens who are not convicts in any sense of the word. It seems to me that looking at this matter from the laboring man's point of view, that the gentlemen are all wrong. I have been sat upon here and have been upbraided by gentlemen on this floor as being an enemy of the laboring element. Nothing certainly could be farther from my position. There is no man on this floor that knows any more about hard work, or that for his age has done much more of it in the matter of manual labor, than I have, and when I speak about labor and laboring men, I know what I am talking about. A person commits an offense, and is at the time a resident of the Territory of Montana; presumably he is a laboring man, for the most of us are. He is convicted and sentenced to the Penitentiary of the State of Montana. Now are the rest of the laboring men who are left in this State in any worse position by reason of his having to work in the penitentiary than they were by reason of his having worked before he was convicted and sent to the penitentiary? He still remains a human being; he still remains with hands and legs and means to move about and work. He is confined at the expense of the State, and let me suggest it right here, that when the Committee on Finance of the State, or when this convention comes to provide for the expenses of reformatory institutions and all the public institutions that will be deemed necessary in this State, I do not know where the money is to come from. That is simply one element to be considered, and I say that it is and should be considered by the people of the State of Montana who are now about to assume the obligations of a young State She has not resources sufficient to throw money into her Treasury to enable her to keep all these men in idleness, and it is inhuman to do it if she had. Gentlemen have suggested here that the Legislature has done nothing with this matter. The Legislatures of older States have labored over this matter session after session, and but very few of them have ever attempted even to submit to the people an amendment to the constitution providing for anything of this kind. All of the power of legislation so far as a State is concerned that is not taken away from it by the Constitution of he United States or its own Constitution, still remains, so that if this matter be left alone, and if no word be said about labor or convict labor, the Legislature will be at liberty to enact just such laws as the times and the necessities of the times demand. I do not stand on this floor, Mr. Chairman, to talk for policy; I do not stand here to talk for votes. I will say to the gentleman that I agree with him in the hope that I will never come to the Legislature again, for there is nothing in it for me. But this is a matter of principle with me, and I believe the convention will bear me out in the view that some sort of means should be left whereby the Legislature can make provision for the employment of these men and for some remuneration to the State towards paying the expense of keeping, guarding and caring for those convicts; and I submit that in my judgment the last amendment proposed by the gentleman from Silver Bow is a snare; it means nothing; it leaves the matter just as it is in Section 3, and it ties the hands of the Legislature so firmly that they never can by any means or by any kind of legislation enact a law whereby men who are convicted of crime can be employed without coming into contact with free labor. It is something impossible. I am opposed in principle to this matter of farming out convicts, I do not believe in that, but I believe that the State should have an institution whereby it can, either through contractors or otherwise, put in machinery and manufacture anything and everything it wants to and put that stuff upon the market and sell it. As was well suggested here, every man convicted and sent to the penitentiary, if possible should be compelled to learn a trade, or to perform some kind of labor that would place him where, when his term of sentence was served, he could go out into the world and be of some use and benefit to himself as well as to society. All men who are sent to the penitentiary are not villians. It is true they may have committed some technical offense. Many of them go there who are; but to say that the Constitution shall provide that no man sentenced to the penitentiary shall ever be permitted to learn a trade—because that is what you say if that provision is adopted, that he shall not be permitted to labor—that he shall not be permitted to exercise even his muscles, except as was suggested, by piling up bricks and throwing them down again—then, gentlemen, I do not know whether I can vote for the adoption of that constitution or not. I do not believe we want to do that. There are institutions in the United States where the honest laboring man has had occasion to complain of the way in which convict labor was controlled and handled, but that condition of affairs has not existed here; there are but a few of the States where it has. The gentlemen who come here apparently to make a constitution for perhaps the Knights of Labor, come here with a large amount of statistics, and they tell us what has occurred here and there and everywhere, but it does not prove much. Leave this matter where the Legislature can say that when that condition of things arises we will change the law. Now, the mere fact that I made use of in my former illustration when I was on the floor before, that 1500 citizens, honest laborers, were working shoulder to shoulder with four or five hundred convicts does not seem to me so serious a matter as some people consider it. The fact is that at the time the contract was let to this manufacturing company at the penitentiary of which I was speaking, the Ciy of Stillwater had a population of 7,000 people; inside of five years after that over 1500 people, most of them with families, were all doing well and were comfortably fixed in the necessities and comforts of life. Those men went out to work as citizens within the walls of that penitentiary, shoulder to shoulder, if you will have it that way, with men dressed in striped flannel, and went home to their families, and they were respected as much as any one in that town. And I venture to say to the gentleman back here who spoke about having been a guard in a penitentiary, that if he had performed his duty to the State those men would not have been abused. as he suggested they were. Under a proper system the convicts are guarded by, fed by and controlled by the State, whether under a contract system or otherwise. I do not know of my own knowledge of a single State where the State does not feed its own prisoners. Now these are matters that are brought in here for the purpose of influencing men who have not investigated this matter to permit to go into this constitution a clause that of itself and on its face is vicious, and that in its effect will be inhuman; and I believe that if the men who compose this convention will act from the dictates of conscience and upon their own sound judgment, without any other influences, they will vote against any provision going into this constitution that would tie the hands of the Legislature in

MARTIN MAGINNIS
EDWARD D AIKEN JOHN R TOOLE
JAMES E CALLAWAY
WALTER A BURLEIGH WILLIAM M BULLARD
WALTER COOPER

any way, shape or manner as to the matter of convict labor in the State of Montana. (Applause.)

Mr. Ramsdell, of Missoula: The paramount idea in the human breast, it seems to me, is self-preservation, and under this system of convict labor the right to honest labor for the time, being taken away from the free toilers of this country, the law of self-preservation and the right to self-preservation steps in and the laboring man is privileged to demand the right to his labor. Today under circumstances in many cases he is denied this right. Why? Because there is not a sufficient amount of labor; because there are more laboring men than there is work to perform. And having this inherent right I maintain that the laboring man has a right to demand on the part of the State that these people confined within the walls of a penitentiary shall not be allowed to infringe on his right to labor. If they by their labor shut him out of employment I maintain that it is one of his inalienable rights to demand that their labor shall not conflict with his labor and that the right of self-preservation with all its logical sequences, shall not be denied him.

Mr. Collins, of Cascade: Is an amendment in order at this time?

The Chairman: No sir.

Mr. Collins, of Cascade: I will state to the Chair that the gentleman from Deer Lodge withdrew his amendment.

Mr. J. R. Toole, of Deer Lodge: I offered at one time, Mr. Chairman, to withdraw my amendment but my second did not consent, and I desire to do so now.

The Chairman: It is rather a stretch of parliamentary law, but that has been the rule of this committee.

Mr. Collins, of Cascade: In the understanding of the Chair, is the amendment of the gentleman from Deer Lodge before the committee? I only wanted to renew that if it was withdrawn.

The Chairman: The question before the house now is on the amendment offered by the gentleman from Silver Bow.

Mr. Hogan, of Silver Bow: As a member of the committee that recommended that report I certainly shall oppose the amendment offered by Mr. Dixon from Silver Bow. I think it covers the ground more specifically than the other. It gives the Legislature a chance to exercise some discretion. I differ materially from some other gentlemen that have spoken. I claim that any work that is done and placed on the labor market as donated for charitable purposes does not compete with free labor and I shall certainly vote for the amendment.

The Chair stated the motion on the amendment of the gentleman from Silver Bow, Mr. Dixon.

Mr. Collins, of Cascade, called for a division. The vote resulted 24 in the affirmative to 30 in the negative.

The Chair declared the amendment lost.

The Chairman: The question is now on the motion of the gentleman from Custer. The original motion is "It shall be unlawful for the commissioners or other state officers of any penitentiary or other reformatory institution in the State of Montana to let by contract to any person or persons, or corporation, the labor of any convict confined within said institution." To that motion the gentleman from Custer offered the amendment to insert in the place of the word "commissioners" the words "warden or other officers in authority." So that it shall read "It shall be unlawful for the warden or other state officers in authority."

The Chair then put the motion and the same was declared carried.

The Chairman: The question is now upon the motion of the gentleman from Deer Lodge, to which the amendment just adopted applies, and which has just been read.

The Chair then put the motion on the substitute offered by the gentleman from Deer Lodge, and the same was declared carried on division by a vote of 38 in the affirmative to 9 in the negative.

The Chair declared the substitute adopted.

The Chairman: If there are no other amendments to Section 3, the Clerk will read Section 4.

The Clerk read Section 4 as follows: "Section 4. That no child under fourteen years of age shall by any corporation or person, be employed in either mines or manufactories in this State."

Mr. Gibson, of Cascade, sent up a substitute for Section 4, which the Clerk read as follows: "That no child under fourteen years of age shall be employed by any person or corporation in the mines of this State, and in no manufactory within the State, for more than four months in any year."

Mr. Marion, of Missoula, sent up an amendment which the Clerk read as follows: "Amend by striking out the word 'fourteen' and insert in lieu thereof the word 'twelve'."

The Chairman: The question is on the motion made by the gentleman from Missoula to amend the amendment offered by the gentleman from Cascade.

Mr. Knowles, of Silver Bow. I am opposed to the amendment; first, because the child of that age is too young and in the next place, I am opposed to this whole provision. I am in favor of leaving it to the Legislature. The gentlemen think they have accomplished a good deal when they put a provision of this kind in the constitution. I say it has no sense; there is no penalty attached to it; it doesn't amount to the paper it is written on, and it properly belongs to the Legislature, and I believe there is no Legislature that can be convened in Montana but what would enact a law to that effect and provide heavy penalties for it. Your provision in the constitution doesn't amount to anything; it leaves the whole matter to the Legislature. The Legislature has got to go over all this matter again and provide a penalty, and I am for that reason opposed to encumbering the constitution with such matters as this. Let us put something in that amounts to something; such a prohibition amounts to nothing whatever.

The Chair put the question on the amendment of the gentleman from Missoula (Mr. Marion), and the same was declared lost.

The Chairman: The question is now on the amendment offered by the gentleman from Cascade (Mr. Gibson).

The Chair put the motion on the question of the amendment of the gentleman from Cascade (Mr. Gibson) and the same was declared lost.

Mr. Burleigh, of Custer: Mr. Chairman, I move to strike out Section 4

The motion was seconded.

Mr. Breen, of Jefferson: If this question is to strike out this like everything else because the gentlemen say that there is no Legislature but what would pass such an enactment, I want to ask how it is that there have been fifteen or sixteen Legislatures and there have been no enactments of this kind. We have places in the Territory of Montana in both mines and workshops where it will kill any child to work four months in the year, and for that reason I am in favor of this provision standing just as it is. I claim it is no fit place for any child to work in the mine or workshop. They are liable to be blown up or killed; they are poisoned with the noxious air of these places, or they may be crushed with heavy weights falling upon them. I am in favor of the provision standing just as it is.

Mr. Knowles, of Silver Bow: I would like to ask the gentleman, supposing any mining company fails to comply with that provision of the Constitution, what will you do with him? Are you providing any penalty?

Mr. Breen, of Jefferson: I should ask Judge Knowles to make some penalty.

Mr. Knowles, of Silver Bow: That is, you would make the Constitution a criminal statute? When you want to limit the powers of government upon a matter of this kind I am not here to interpose any objection, but this is a limitation upon the powers of individuals, and when you come to individuals you have got to make a penalty—you have got to add some kind of punishment as a penalty. Now, I have been in favor of such legislation as this, and whenever the time comes in Montana when children under fourteen years of age are employed in mines or factories, there will be found plenty of legislation upon that subject. It has been a fight that has been fought and won years ago in England. There the people rose up in their might and demanded legislation of Parliament to prohibit the working of children in mines. It was found that working children in mines away from the sunlight, not because they were liable to be hurt, not because they were liable to be injured by bad air, but because of the lack of God's sunlight, warped them and retarded their growth. Children growing up to manhood want the sunlight; they want the free air of heaven. The young of all animals, the whole animal creation is stunted and warped under such conditions; even fish that have no eyes are affected It was found that the health of the children was ruined by working in mines. And for this reason I do not believe that there is any legislative body that could be convened in Montana but would pass a criminal statute. But you come in here with a prohibition on your citizens. Why, we are establishing a constitution here for the government, and when the government comes into being it can enact such statutes as these. I know of no legislative body in the United States where this question has been presented to them as a practical matter, that has not adopted it. The only thing I know of of the kind where such thing has been declared to be unconstitutional is where a Governor of New York vetoed a bill that provided that the street car drivers of New York should not be compelled to work fourteen or fifteen hours a day. He said it was not proper legislation. Here is a provision for the Statute of Montana Territory that I have been referred to. "All corporations or individuals working mines or manufactories, who shall employ, or permit to be employed, any children, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding $1,000." That is a Statute of Montana; it exists on the Statute Book; it will go into effect as the law of Montana and be enforced as a law of this State, and your constitutional provision does not amount to the paper it is written on, while that does amount to something.

Mr. J. K. Toole, of Lewis & Clarke, sent an amendment.

The Chairman, The gentleman from Lewis & Clarke offers the following amendment to Section 4. Add after Section 4, the following words, "The Legislative Assembly shall enforce this provision by appropriate legislation"

Mr. Hartman, of Gallatin: I desire to enter a hearty concurrence to what has been uttered by Judge Knowles upon this question, and also to record my opposition to the amendment that has just been offered, upon this ground. Gentlemen seem to have mistaken the purpose of this body. We are not here as the Legislative Assembly of the State of Montana, we are here for the purpose of enacting constitutional principles upon which shall be based the subsequent legislation of the State. Now it is argued that this is a good proposition. I heartily endorse it; this is a good proposition; so are some things which are contained in the Ten Commandments, and yet at the same time, that is no argument in favor of incorporating them in the Constitution of the State of Montana. We are not here for the purpose of making a Statute Book; if we are, then let us take the Statutes of the Territory of Montana, and those that are good, those that are beneficial, those that have served the purposes of this territory well, let us put them into the Constitution and do away wih the Legislative Assembly entirely. Judge Knowles has completely answered every argument in favor of this proposition. Gentlemen of the convention we are fast drifting in all of our deliberations too much in the direction of legislation instead of incorporating principles in our constitution, and for that reason I say that though it be a good bill, and I would support it were this a Legislative Assembly, and were there any penalty affixed to it, yet at the same time this is not the time to have such a proposition introduced here. If we keep on endorsing and incorporating everything that is proposed here because it is good, because it is wise, because it is beneficial, a volume as large as Webster's Unabridged Dictionary will not contain the Constitution of the State of Montana I am therefore not in favor of any motion which incorporates this in the constitution

The Chair put the question on the amendment of the gentleman from Lewis & Clarke, (Mr. Toole) and the same was declared lost.

The Chairman: The question is now on the motion to strike out Section 4.

The Chair put the motion moved by the gentleman from Custer, Mr. Burleigh, striking out Section 4 and the same was declared carried.

Mr Eaton, of Park I move the committee do now rise, report progress and ask leave to sit again

The motion was seconded.

The Chair put the motion and the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

Mr. Carpenter, of Lewis & Clarke: Mr. President, the committee of the whole have had under consideration Proposition No. 5, being Resolution No. 1, in reference to printing General Laws. They have directed their Chairman to report to the convention that they request that it be referred to the committee on Legislative Affairs.

The President: Gentlemen of the convention, you have heard the report of the committee of the whole on the matter to which the Chairman has referred, and if there be no objection the matter will be so referred to the Committee on Legislative Affairs.

Mr. Carpenter, of Lewis & Clarke: Mr. President, the Committee of the whole have had under consideration Proposition No. 11, Article on Labor, have made some progress, but not having finished the consideration of said article, have requested their Chairman to report that fact to the convention and ask leave to sit again.

The President: Gentlemen, you have heard the report of the Committee. If there be no objection it will be received and leave granted to sit again.

Mr. Eaton, of Park, I move we take a recess until 8 o'clock this evening.

Mr. Burleigh, of Custer. I move as an amendment to that that we do now adjourn.

The motion was seconded.

A division being called for, the motion of the gentleman from Custer (Mr. Burleigh) was declared lost by a vote of 20 in the affirmative to 32 in the negative

The motion of the gentleman from Park having been seconded, the Chair put the said motion and the same was declared carried.

The convention took a recess until 8 o'clock P. M.

Monday, July 22nd, 1889, Evening Session. 8 P. M.

The convention was called to order, President Clark in the Chair.

The Clerk called the roll.

The President. The convention upon taking a recess was engaged in the consideration of General Orders. That is now the order of business before the convention.

Mr. Gibson, of Cascade: Mr. President, as my colleague, Mr. Webster, is sick, I would ask that he be excused.

The President: The gentleman from Cascade will be excused if there be no objection.

Mr. Haskell, of Dawson: I would ask leave of absence for my Colleague, Mr. Goddard, until Tuesday, if he has not been heretofore excused.

Mr. President: If there be no objection the gentleman will be excused until Tuesday.

Mr. J. K. Toole, of Deer Lodge· I move that the convention resolve itself into committee of the whole for the consideration of General Orders.

Mr. Middleton, of Custer· If the gentleman will wait a moment, as Chairman of the Engrossing and Enrolling Committee, I would like to make a report. I sent up the report to the Clerk's desk.

The President: The report of the Chairman of the Engrossing and Enrolling Committee will be read.

The Clerk read as follows: Mr. President, your committee on Engrossment and Enrollment to whom were referred Propositions Nos. 1, 2, and 13, beg leave to report that they have carefully compared each of the engrossed copies of said propositions with the originals as amended in committee of the whole, and find them correctly engrossed.

(Signed) MIDDLETON, Chairman.

The President: If there be no objection the report will be received.

Mr Middleton, of Custer. Mr. Chairman, I move that Proposition No. 1 be referred to the Printing Committee for the purpose of being printed and that Propositions. Nos. 2 and 13 be referred to the Engrossing and Enrolling Committee for the purpose of being enrolled.

The motion was seconded.

The Chair put the motion and the same was declared carried.

The President: The gentleman from Deer Lodge (Mr. Toole), moves that the convention do now resolve itself into committee of the whole for the consideration of general orders Is there a second to the motion?

The motion was seconded and the same was declared carried.

The President. The gentleman from Lewis & Clarke, Mr. Carpenter, will please resume his position in the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Carpenter, of Lewis & Clarke, in the Chair. The Committee was called to order.

The Chairman. The convention is now in committee of the whole on Proposition No. 11, Section No. 5

The Clerk read Sec. 5, as follows: "Sec. 5. That on and after the adoption of this constitution by the State of Montana, it shall be unlawful for any company or corporation to pay their employees in any other way than in lawful money of the United States."

Mr. Sargeant, of Silver Bow I move that Section 5 be stricken out.

The motion was seconded.

Mr. Courtney, of Silver Bow: I oppose that motion. I think this is a very good provision and would like to see it incorporaed in the Constitution. I am certainly opposed to its being stricken out. I shall vote against the motion.

Mr. Sargeant, of Silver Bow: The reason why I object to the clause is because it is matter for Legislative action, if incorporated at all; it is something with which this convention has absolutely nothing to do. If this convention is going to regulate all the relations between the employer and his employees, we can sit here until election day and then our duties will not be over. I do not think any argument is required to show that this is not desired as a subject of constitutional provision.

The Chair put the motion, and the same was declared carried.

The Clerk read Section 6 as follows "Section 6. That on and after the adoption of this Constitution by the State of Montana, all state, county and municipal work shall be done by the day, and that eight hours shal constitute a legal day's work for all clases of mechanics and laborers in connection with the same"

Mr. Marion, of Missoula: Mr. Chairman, I move that Section No. 6 be stricken out.

The motion was seconded.

The Chair stated the motion.

Mr. J. R. Toole, of Deer Lodge: Mr Chairman, I wish to show the reasons why I oppose that. It is a well known fact by persons who have paid much attention to this matter that state institutions, both in new and old States, are the cause of more jobbery than any other kind of public business. We are all familiar with the history of the State Capitol of the State of New York. I can see no reason why this clause cannot be put into the constitution. The tendency of the times is to something of this kind, and eight hours constitutes a legal day's work in nearly all branches or departments of business. The tendency of the times is such that we ought to take this step here and now. The forces of nature are being utilized to such an extent, that steam, electricity, and other forces are being employed in the matter of labor, so that it is a wrong to interfere with the men who do work and who are growing less every year, and I think it is a wrong state of affairs, when men who are compelled to work are made to work ten, twelve and fourteen hours a day. They are the very class of people who should advance in this world and who should have that time and opportunity to read and keep pace with the times and cultivate their minds that give men a taste for the higher things of life. The State would be better for it; the community at large would be better for it. The tendency of the times is in that direction and is pointing that way. Either this section or some similar one should be adopted.

Mr. Marion, of Missoula: Mr. Chairman, I have no remarks to make in regard to this section. I believe the meaning of the section is plain enough.

A division being called for the motion of the gentleman from Missoula (Mr. Marion) was declared carried by a vote of 21 in the affirmative to 19 in the negative.

The Chairman: I would call the attention of the committee to the fact that three other propositions were referred to the committee to be considered in connection with this proposition. What is the pleasure of the committee?

Mr. J. R. Toole, of Deer Lodge: I move that when the committee rise it refer the propositions back with the recommendation that they do not pass.

The motion was seconded.

Mr. Hogan, of Silver Bow: I would offer as an amendment to that motion that those propositions be read and acted on separately, so that the members will know what they are referring back.

The motion was seconded.

Mr. Middleton, of Custer: Mr. Chairman, I hope this motion will not prevail. The gentleman who made the motion that they be referred back with the recommendation that they do not pass knows that the contents of them and knows that the substance of them to a considerable extent was embodied in the proposition just considered, and it seems to me a complete waste of time to consider all these propositions again after the main propositions have been considered and acted upon.

Mr. J. K. Toole, of Lewis & Clarke: I think there is one proposition there about Chinese labor which was not embraced.

Mr. Hogan, of Silver Bow: Mr. Chairman, in reply to the gentleman I would state that there is nothing in any of these propositions that has any bearing on what has been acted upon, and my reason for moving the amendment was to have each proposition read and acted upon separately. If the committee wishes to take any action upon them let them do so, but let us not throw them in the waste basket without knowing what we are doing.

Mr. Callaway, of Madison: It seems but fair that the gentleman who moved these propositions should have them considered, and I hope to see the amendment of the gentleman from Silver Bow, carried.

Mr. Rickards, of Silver Bow: I simply wish to say that I hope the motion of my colleague from Silver Bow (Mr. Hogan) will prevail. For one, I should not wish to see any person or any proposition treated unfairly. I believe that a proposition should stand on its merits, if it has any, and if it has not, this body is competent to judge. I hope there will be no disposition shown at any time by the committee of the whole or by this convention to treat discourteously any proposition of any gentleman of this convention.

Mr. Clark, of Silver Bow: I do not believe in any wholesale disposition of propositions and I am in favor of the motion made by the gentleman from Silver Bow (Mr. Hogan), with reference to considering these propositions separately. As the gentleman from Custer has suggested, the gentleman who made this motion to refer them in bulk may be well acquainted with their contents; the gentleman from Custer himself may be well acquainted with their contents; but I venture to say there is not upon the floor of this committee room a half dozen members who can tell what these propositions are. Hence, I am in favor of taking them up separately and giving them proper consideration before reporting them back.

The Chair put the motion of the gentleman from Silver Bow (Mr. Hogan), and the same was declared carrier.

The Chairman: The Clerk will read the propositions.

The Clerk read as follows: "Proposition No. 7 by A. R. Joy. Chinese Labor. Section 1. Par. 1. No corporation now existing or hereafter formed under the laws of this State shall after the adoption of this constitution employ directly or indirectly in any capacity any Chinese or Mongolian.

Par. 2. The legislature shall pass such laws as may be necessary to enforce this provision.

Section 2. No Chinese shall be employed on any State, county, municipal, or other public work within this State except in punishment for crime.

Section 3. Par. 1. The Legislature shall discourage by all means within its power the immigration to this State of all foreigners ineligible to become citizens of the United States

Par. 2. All contracts for Chinese and Coolie labor hereafter made to be performed in this State shall be void.

Par. 3. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor shall be punished by such fines and penalties as the legislature may prescribe

Par. 4. The legislature shall delegate all necessary power to the incorporated cities and towns of this State for the removal of Chinese without the limits of such cities and towns, or for their location within prescribed portions of those limits.

Mr. Chessman, of Lewis & Clarke. Mr Chairman, I ask that the history of the proposition be read.

The Clerk read as follows Proposition No. 7 by A. R. Joy. Chinese Labor July 11th, received, read and referred to Committee No. 23 on Labor. Mr. President: The Committee on Labor have had under consideration Proposition No. 7 and have directed me to report the same to the convention with the recommendation that it do not pass. This does not apply to paragraph 4 of Section 3, which we recommend be referred to the Committee on City, County and Town organizations, where it properly belongs.

(Signed) BREEN, Chairman.

Mr. Rickards, of Silver Bow: I move that when the Committee rise they report back to the convention, recommending that this proposition do not pass.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

The clerk read as follows: Proposition No. 3 by Hogan to prevent importation of labor under contract into the State of Montana.

It shall be unlawful for any individual, company or corporation having work done in the State of Montana, to import into the State any person or persons under contract or agreement to perform any labor in the State of Montana.

That any individual, company or corporation violating any provision hereof, shall forfeit to the State one thousand dollars ($1,000) for each and every violation hereof, to be recovered by an action at law.

The clerk read the history of said Proposition as follows: Proposition No. 3 by Hogan, to prevent importation of contract labor. July 11th, received, read and referred to Committee No 23 on Labor. Mr. President: The Committee on Labor have considered Proposition No. 3 and have directed me to report the same back with the recommendation that it do not pass

(Signed) PETER BREEN, Chairman.

Mr. J. K. Toole, of Deer Lodge: I move that when the committee rise they report the resolution back with the recommendation that it do not pass.

The motion was seconded.

Mr. Hogan, of Silver Bow. I would state to the Committee that I hope this motion will not carry My reason for doing this is that the only objection which was brought up in the Committee against it, or seemed to be, was the unconstitutionality of it I do not think myself it is unconstitutional, it may be, but I do not think it. I think there are several things we have done that would infringe on the rights of the people as much as that. I believe it would be a benefit to all the people of the Territory; I believe it is something that would help the Territory in different ways. There is one thing it will do, we will get a better class of people in here. I do not believe any person that is brought in here under contract is worthy to be an American citizen. They are generally a class of people that are not identified with the American people or their institutions They are an injury to everybody. That is the reason why I hope the motion will not prevail.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The Clerk read as follows: Resolution No. 17 offered by Field of Park: Protection of Discharged Employees. July 11th, received, read and referred to Committee No. 23 on Labor; July 20th, reported back without recommendation and placed on General File with No. 6 Mr. President: Your Committee on Labor to whom was referred Resolution No. 17 introduced by Field of Park, have had the same under consideration and have directed me to report the same back without recommendation.

(Signed) PETER BREEN, Chairman.

Resolution No. 17 relating to the protection of discharged employees:

Resolved, first, That if any person, agent, company or corporation after having discharged any employee from his or its service, shall prevent or attempt to prevent by word or writing of any kind such discharged employee from obtaining employment with any person, company or corporation, such person, agent or corporation shall be guilty of a misdemeanor and shall be liable for damages to be recovered by civil action.

Second: If any railway company, or any other company or partnership or corporation in this State shall authorize or allow any of its or their agents to blacklist any discharged employees, or attempt by word or writing or any other means whatever to prevent such discharged employee or any employee who may have voluntarily left said company's service, from obtaining employment with any other person or company, such company or co-partnership shall be liable in treble damages to such employee so prevented from obtaining employment, to be recovered by him by a civil action.

The Chairman: What is the pleasure of the committee?

Mr. Middleton, of Custer: I move that when the committee rise it report the resolution back to the convention with recommendation that it do not pass.

The motion was seconded. The Chair put the motion to the house and the same was declared carried.

Mr. Burleigh, of Custer: I move the committee rise and report to the convention.

The motion was seconded.

Mr. Bickford, of Missoula: Mr. Chairman, I move, sir, that when the committee rise it report Proposition No. 11, with the amendments, back to the convention with the recommendation that it be passed as amended.

The motion was seconded. The Chair put the motion to the House and the same was declared carried.

Mr. Burleigh, of Custer: I now renew my motion that the committee do rise and report.

The Chair put the motion of the gentleman from Custer and the same was declared lost.

Mr. Witter, of Beaverhead: Mr. Chairman, I move we take up Proposition No. 18.

There was no second to the motion.

Mr. Marion, of Missoula: Mr. Chairman, I move you, sir, that this committee take up General File No. 14, Proposition No. 15 in relation to the Bureau of Agriculture.

The motion was seconded.

The Chair put the question on said motion and the same was declared carried.

Mr. J. K. Toole, of Lewis & Clarke: I move, Mr. Chairman, to strike out Proposition No. 15.

The motion was seconded.

The Chair stated the motion.

Mr. J. K. Toole, of Lewis & Clarke: Mr. Chairman, the article which has just been adopted by the committee of the whole has a provision in it by which the Legislative Assembly may provide for a commissioner of Labor and Industry. I take it that that is sufficiently comprehensive to embrace a Commissioner of Agriculture, if the Legislature shall deem it necessary to create that office. I think, sir, from the start that we ought to make as economical a government under this constitution as it is possible for us to do. At this time there is in my judgment no special demand or necessity for the creation of that office, but if there should be upon the assembling of the Legislative Assembly, which will be not later perhaps than the 15th day of November next, in my judgment there is ample opportunity for the creation of that office.

Mr. Clark, of Silver Bow: Mr. Chairman, I move to amend the motion made by the gentleman from Lewis & Clarke, that when this committee rise, it report this section or article back to the convention with the recommendation that it be stricken from the file.

The motion was seconded.

The Chair put the question on the motion of the gentleman of Silver Bow (Mr. Clark) and the same was declared carried.

Mr. Witter, of Beaverhead. Mr. Chairman, I move that we take up Proposition No. 14, General File No. 12.

The motion was seconded.

Mr. Rickards, of Silver Bow. Mr. Chairman, I move to amend to take up General File No 11, Proposition No. 13.

The Chairman: That has been passed.

Mr. Collins, of Cascade. Proposition No. 13 relating to School Lands, has that been passed?

The Chairman. The motion before the committee is to take up Proposition No 14, General File No. 12 in relation to Rights of Suffrage

Mr Collins, of Cascade. The gentleman from Silver Bow moves to amend to take up No. 13 instead of No. 12.

The Chairman. That has been passed by the convention.

The Chair put the question on the motion of the gentleman from Beaverhead and the same was declared carried.

The Chairman: What is the pleasure of the committee? The Clerk will proceed to read Section 1.

The Clerk read as follows: "Section 1. All elections by the people shall be by ballot."

Mr. Cardwell, of Jefferson: I would ask that section 2 be passed over for the present. Some of the gentlemen who are on that committee are not here tonight. I would ask that the section be passed for the present.

Mr. Bickford, of Missoula: I would move you, sir, the Proposition No. 14 be made the special order for 2 o'clock in the afternoon of Wednesday. I make this motion for the purpose of enabling all the members of the committee who made this report to be present.

The motion was seconded.

The Chair stated the motion.

Mr. Witter, of Beaverhead. It occurs to me that if that is the only proposition that the committee wish to amend, that that might be referred and made a special order at that time and we could proceed with the rest of the propositions, and not take up some other proposition. As I understand, there are to be some amendments relating to the qualifications of voters, and who shall be entitled to vote. I would move an amendment that Section 2 be made a special order instead of the whole proposition.

Mr. Bullard, of Jefferson: I would ask if amendments cannot be offered when this proposition comes up for final passage?

The Chairman: That is the rule of the convention, as the Chair understands it.

Mr. Hogan, of Silver Bow: Mr. Chairman, I do not see that there is any use for us to be deferring these different propositions. It will certainly not go to its final passage this evening. Some of the committee can be here on its final passage and offer the amendments. I think if the members of those committees want to be present they should be here. We don't care about spending the summer here, and if you defer all these propositions just to suit the committeemen, you are apt to be here until next October.

Mr. Bickford, of Missoula: Mr. Chairman, I made the motion for the reason that one of the members of that committee is a cripple. He finds it, if not impossible at least very inconvenient to be out in the evening He has an amendment to offer to some portion of this Proposition No. 14 which he considers material, and upon which he would like to be heard. I believe, sir, that the motion should prevail for this reason alone. I believe that we should extend to every member of this convention every courtesy that is within our power to extend, and I believe, sir, that it is our duty to listen to any gentleman who has an important amendment to offer to a proposition of this kind.

Mr. Clark, of Silver Bow: Mr. Chairman, I desire to state my concurrence with the views of the gentleman of Missoula in regard to this matter. I am well aware that one of the gentlemen, a member of this committee, is not able to get here very well in the evening. He is a gentleman that is very deeply interested in this subject, and I think in all courtesy to this gentleman that we should defer the consideration of at least this section until it is convenient for him to be here with us in the day time.

Mr. Callaway, of Madison: I second the motion of the gentleman from Missoula.

The Chair put the question on motion of the gentleman from Missoula (Mr. Bickford), the same was declared carried, the Proposition No. 14 was declared the special order for Wednesday afternoon at 2 P. M.

Mr. Buford, of Madison. I move this committee now take up Resolution No. 8, General File, No. 13.

The motion was seconded.

The Chair put the motion and the same was declared carried.

The Clerk read Resolution No. 8 as follows: "Resolution No. 8 relating to School Lands, introduced by Luce. Resolved, that none of the lands granted by Congress to the State of Montana for the support of common schools shall ever be sold or granted, or disposed of in any manner except by lease, nor shall any moneys received therefrom be used for any other purpose than for the support of the common schools of the State."

Mr. Bullard, of Jefferson: I move you, sir, that when the committee rise it report this section back with the recommendation that it be adopted.

Mr. J. K. Toole, of Lewis & Clarke: I desire to offer an amendment which I will send up in a moment.

Mr. Bickford, of Missoula: I desire to offer an amendment.

The Clerk read the amendment of the gentleman from Missoula (Mr. Bickford) as follows: "Resolved, that the lands granted by Congress to the State of Montana for the support of common schools and for university purposes, may be sold or leased in the manner and at such times as may be prescribed by law, provided that none of such lands shall be sold for less than $10 an acre."

Mr. Rickards, of Silver Bow: Mr. Chairman, as Chairman of the Committee on Education, I express for myself, and I think for our committee, regret that we have taken up this matter at this time. The subject embraced in the original proposition, as well as the amendment just read, has been gone over thoroughly by the committee to which I refer. Our report is before you in printed form, and I think it would be manifestly unjust to your Committee to entertain this proposition at this time for consideration; and therefore I move as a substitute for all that is before us that when this committee rise they report back this proposition with the recommendation that it be considered at the same time with General File No. 16, which is the report of the Committee on Education.

The Chairman: The Chair is of the impression that this resolution is not in order at this time. The Chair is of the opinion that a resolution was passed a few days ago that when these independent propositions upon subjects cognate with the report of standing committees came up they should be considered with them. The resolution is therefore not in order, and will be considered when the report of the standing committee on Education is before the committee.

Mr. Clark, of Silver Bow: I move that we take up Proposition No. 21, General File No. 21, Judicial Departments.

The motion was seconded.

The Chair put the question on said motion and the same was declared carried.

The Clerk proceeded to read Section 1, Proposition 21.

Mr. Luce, of Gallatin: If it be in order, sir, I would suggest Proposition No. 22 be taken up first. We will not have time to consider all of Proposition 21 tonight, and we might get through with Proposition No. 22.

The Chairman: If there be no objection Proposition No 22 will be read.

Mr. Burleigh, of Custer, objected.

The Chairman: The Clerk will read Proposition No. 21.

The Clerk read as follows: "Article—Judicial Departments, Section 1. The Judicial power of the State shall be vested in the Senate, sitting as a court of impeachment, in a Supreme Court, District Court, Justices of the Peace, and such other inferior courts as the Legislative Assembly may establish in any incorporated city or town."

Mr. Collins, of Cascade: I move to strike out the words "sitting as a Court of Impeachment."

The motion was seconded.

Mr Burleigh, of Custer: I hope the amendment will not prevail There is not a State in this Union that does not provide a Court of Impeachment in dealing with certain officers, and it is as much a part of the duty of the State as its Supreme Court. It is a wonderful proposition to come from a gentleman of the legal lore and learning of my friend from Great Falls. He certainly must be stultified this evening.

Mr. Collins, of Cascade: I beg to return my thanks to the gentleman from Silver Bow County for seconding this motion of mine so as to enable me to air my views before the committee upon this matter. I believe, sir, that the judicial proceedings of an impeachment are the most important that can be had in the State. I do not believe because it has been the practice in the past thousand years, that they should be tried before a political body, and that the new State of Montana should fall into that same groove. I believe, sir, that when an impeachment of an officer is necessary he should be impeached before the highest judicial tribunal of the State, and in the Supreme Court of the State, a Court which is farthest removed from political or partisan bias, or influence, and a Court which is particularly and especially learned in the law. I believe there is no use—I can see no use in following the old land marks in this particular case. The Senate of the State will be a party body, it will be composed of a large number of men The question of the impeachment of a public officer will, to a certain extent, bring out all the latent prejudices and biased feelings of the parties connected with the case, as well as the members of the senate before whom it is tried, and it should be removed from an arena of that class or kind. Now, no matter what the judiciary committee may think of the fact, I believe, and I am glad again that the gentleman has allowed me to express it before the committee, that that should be relegated with the grand jury and other things to the rear; that it is no good argument that every other State of the Union has a court of this kind, and it is no argument that it has been in existence from time immemorial. I believe, sir, it would be a great stride in advance of the natural progress of things if the new State of Montana should wipe out of existence the Senate as a Court of Impeachment and place the power in the Supreme Court of Montana.

The Chair put the question on the motion of the gentleman from Cascade (Mr. Collins) and the same was declared lost.

The Clerk read Section 2 as follows: "Section 2. The Supreme Court, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, and shall have a general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law."

There being no amendments to section 2, the Clerk read Section 3 as follows: "Section 3. The appellate jurisdiction of the Supreme Court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and injunction, and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. When a jury is required in the Supreme Court to determine an issue of fact, said court shall have power to summon such jury in such manner as may be provided by law. Each of the justices of the Supreme Court shall have power to issue writs of habeas corpus to any part of the State, upon petition by, or on behalf of, any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any district court of the State, or any judge thereof; and such writs may be heard and determined by the justice, or court, or judge, before whom they are made returnable. Each of the justices of the Supreme Court may also issue and hear and determine writs of certiorari in proceedings for contempt in the District Court, and such other writs as may be authorized by law to issue."

There being no amendments to Section 3, the Clerk read Section 4 as follows: "Section 4. At least three terms of the Supreme Court shall be held each year at the seat of government."

There being no amendments to Section 4, the Clerk read Section 5 as follows: "Section 5 The Supreme Court shall consist of three justices, a majority of whom shall be necessary to form a quorum or pronounce a decision; but one or more of said justices may adjourn the court from day to day, or to a day certain; and the Legislative Assembly shall have the power to increase the number of such justices to not less than three nor more that five."

There being no amendments to Section 5 the Clerk read Section 6 as follows: "Section 6. The justices of the Supreme Court shall be elected by the electors of the State, at large, as hereinafter provided."

There being no amendments to Section 6 the Clerk read Section 7 as follows: "Section 7. The term of office of the justices of the Supreme Court, except as in this constitution otherwise provided, shall be six years."

There being no amendments to Section 7 the Clerk read Section 8 as follows: "Section 8. There shall be elected at the first general election provided for by this constitution, one chief justice and two associate justices, who shall constitute the judges of the Supreme Court, and they shall hold their offices until their respective successors are elected and qualified. The terms of office of said justices shall be designated on the ballots at the time of their election. The chief justice shall at said first election be elected for the term of three years, and said two associate justices, one for the term of five years, and one for the term of seven years, and after said first election one justice (or more, if the Legislative Assembly shall increase the members to five) shall be chosen every two years, and the terms of office of said additional justices shall be fixed by law in such manner that at least one of said justices shall be elected every two years. The chief justice shall preside at all terms of the Supreme Court, and in case of his absence the judge having the shortest term to serve shall preside in his stead."

Mr. Witter, of Beaverhead: There is one question I would like to have explained. After the first term who is to be chief justice.

Mr. Dixon, of Silver Bow: As I take it the judge who is elected to succeed the chief justice will succeed the chief justice.

There being no amendments to Section 8 the Clerk read Section 9 as follows: "Section 9. There shall be a clerk of the Supreme Court who shall hold his office for the term of six years, except that the Clerk first elected shall hold his office only until the general election in the year 1892, and until his successor is elected and qualified. He shall be elected by the electors at large of the State, and his compensation shall be fixed by law, and his duties prescribed by law, and by the rules of the Supreme Court.

Mr. Collins, of Cascade: Mr. Chairman, I again move that that section be amended by striking out the word "six" and inserting "two" where it refers to the years in the second line. Change the term from six years to two years.

The motion was seconded.

The Chair stated the motion.

Mr. Collins, of Cascade: Mr. Chairman, I can see why a judicial office should have a comparatively long duration, but I can see no reason why a clerical position, more particularly a political one, as the Clerk of that Court will be to a great extent, should hold an office for six years. I believe that the people should have the opportunity of electing the man who fills that position as often as they elect the one who fill the important positions in the several counties and in the State. The arguments which obtain as to the advisability of the long duration of judicial officers certainly will not apply to this clerical office, and taking all positions without an exception, judicial or otherwise, I believe that the nearer they come to the people the better they are for the people; the better they will perform their services and their duties, and the better satisfaction they will give. And if they are officers who are inclined to shirk any of their duties, if they do not comply with the law, the people at the following election can relegate them to private life. I believe in having elections often, and more particularly for clerical position. I hope that the term of this office will be reduced, if not to two years, at least to four.

Mr. Burleigh, of Custer: I oppose the amendment of the gentleman for this reason, that the office of Clerk of the Supreme Court is one of the most important offices connected with that body. It is not every novice that can go into the Supreme Court room and discharge the duties there, and I think it would be the height of folly, with all due respect to my friend's better judgment,—for I know he is a man of sterling judgment; he never errs except when he gets on a judicial matter of this kind—but it seems to me that the Clerk of the Supreme Court should be elected for as long a term as one of the judges. Now it is the custom in many of the States to appoint a Clerk during life or good behavior, but out in this new territory that is starting out **de novo** in all of its branches there seems to be a dread of life appointments. In consequence I say it is better to refer this matter to the people, and the judiciary committee having this thing under consideration concluded after looking at it in all of its phases that it would be better to fix the term with that of the judges, six years. I think it is eminently proper that it should be so, and while I know it is a nice thing to go before the people every two years, and there is a sort of sound about it that is very pleasant to the popular ear, it nevertheless will obstruct the administration of justice in our Supreme Court. We have endeavored in organizing a Supreme Court here to organize it upon such a basis as will insure speedy action and a certain determination of all questions brought before it And there is not a judge on the Supreme Bench, there is not a lawyer who proctices in the Supreme Court, who does not know it is quite important to have an active, intelligent, upright Clerk, as to have an active, efficient, intelligent, upright judge on the bench. I hope the recommendation of the committee will be carried out. While I am very sorry to come into contact with my learned and amiable friend from Cascade, yet I think he will come to the conclusion that although it may not have as much of the popular **eclat** about it as it should have, yet it is the better course to pursue

The Chair put the question on the motion of the gentleman from Cascade, and the same was declared lost.

There being no further amendments to Section 9 the Clerk read Section 10 as follows: "Section 10. No person shall be eligible to the office of Justice of the Supreme Court, unless he shall have been admitted to practice law in the Supreme Court of the territory or State of Montana, be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in said territory or State at least two years next preceding his election"

Mr. Middleton, of Custer: Mr. Chairman, I move you that the committee do now rise, report progress on Proposition No. 21, and ask leave to sit again.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer (Mr. Middleton) and a division being called for, the same was declared lost by a vote of 22 in the affirmative to 31 in the negative.

There being no further amendments to Section 10 the Clerk read Section 11 as follows: "Section 11 The District Courts shall have original jurisdiction in all cases at law and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax. impost, assessment, toll or municipal fine and in all cases in which the debt, damage, claim or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and in all criminal cases amounting to felony and all cases of misdemeanor not otherwise provided for; of actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; al all matters of probate; of actions of divorce and for annulment of marriage, and of all such special actions and proceedings as are not otherwise provided for. And said Courts shall have the power of naturalization, and to issue papers therefor in all cases where they are authorized so to do by the laws of the United States They shall have appellate jurisdiction in such cases arising in justices and other inferior courts in their respective districts as may be prescribed by law and consistent with this constitution Their process shall extend to all parts of the State, provided that all actions for the recovery of, the possession of, quieting the title to, or for the enforcement of liens upon real property shall be commenced in the county in which the real property, or any part thereof, affected by such action or actions, is situated. Said courts and the judges thereof shall have power also to issue, hear and determine, writs of mandamus, quo warranto, certiorari, prohibition, injunction and other original and remedial writs, and also all writs of habeas corpus, on petition by, or on behalf of, any person in actual custody in their respective districts. Injunctions, writs of prohibition, and habeas corpus may be issued and served on legal holidays and non-judicial days."

Mr. Cooper, of Gallatin, sent up an amendment to Section 11.

The Chairman· The gentleman from Gallatin (Mr: Cooper) moves to strike out in line four the word "fifty" and insert the word "one hundred."

The motion was seconded.

Mr. Cooper, of Gallatin: I would like to have that section fixed so that settlers along the lines of these railroads can collect the value of a horse without having to go to the District Courts.

Mr Dixon, of Silver Bow: I think the gentleman misunderstands the meaning of the section. The district court may have jurisdiction of all cases where the amount in controvercy exceeds fifty dollars, but that does not prevent the inferior courts from having jurisdiction over a larger amount than fifty dollars.

Mr. Cooper of Gallatin withdrew the amendment.

Mr. Bickford, of Missoula: I now desire to renew the motion which was made a few minutes ago, that the committee do now rise, report progress, and ask leave to sit again. I will state my reasons, if the Chair will put the motion.

The motion was seconded.

The Chair stated the motion.

Mr. Bickford, of Missoula: In explanation of the motion I would say, Mr. Chairman, that the very next section provides for the division of the State into judicial districts. A large number of the members from different parts of the territory are now absent who are anxious to be here when this proposition is reached. The report of the Judiciary Committee evidently contemplates that the members from the different parts of the territory should express their opinion, their will, and their wishes with reference to the districting of the State. It is only proper we should hear them and be heard also with regard to the condition the people may be in in the particular sections.

Mr Burleigh, of Custer: I agree with the gentleman in regard to the statement he has made. I think it is but fair that the absentees should be here and express their sentiments in regard to it, as they are as much interested as the balance of us, and I hope the motion will prevail.

Mr. Dixon, of Silver Bow: I would suggest to the gentleman that that is not the next section; it is the following one.

Mr. J. R. Toole, of Deer Lodge: I suggest that it is probable that there never will be a fuller attendance than there is now. In looking over the house, it seems to me, the convention is as full as it has been at any time since I have been here.

Mr. Burleigh, of Custer: Mr. Chairman, I do not believe the gentleman means just what he says. I have never seen the convention looking as sober as it does this evening.

The Chair put the question on the motion of the gentleman from Missoula (Mr. Bickford) and a division being called for, the same was declared lost by a vote of 24 in the affirmative to thirty-five in the negative.

The Chairman: The Clerk will read Sec. 12.

The Clerk read Sec. 12 as follows: "The State shall be divided into Judicial Districts, in each of which there shall be elected by the electors thereof one judge of the District Court, whose term of office shall be four years, except that the District Judges first elected shall hold their offices only until the general election in the year 1892, and until their successors are elected and qualified. Any Judge of the District Court may hold Court for any other Judge of the District Court, and shall do so when required by law."

Mr. Collins of Cascade: Mr. Chairman, to bring the matter before the Convention, and have it settled in Committee, I offer an amendment that shall go into this section which will provide that each of the organized counties in Montana shall have a District Court, and in each at least one Clerk shall be elected by the duly qualified electors. I wish to offer it now, and I do not believe it will interfere in any shape, manner or form with the Article as introduced by the Committee. I think it is the opinion of the majority of the convention that that should be the manner in which the Districts should be divided. I move that as an amendment.

The motion was seconded.

The Chairman: Is this a substitute for the section?

Mr. Collins, of Cascade: No sir, not a substitute,—it will combine sections 12 and 13.

(Reading) "There shall be in each of the organized counties in Montana a District Court, for which at least one Judge shall be elected by the people, whose term of office shall be four years,—except that the District Judges first elected shall hold their offices until the general election in the year 1892, or until their successors are duly elected and qualified.

The Chairman: Does the gentleman from Cascade offer that as an amendment to section 12?

Mr. Collins, of Cascade: Sections 12 and 13 combined.

Mr. Dixon of Silver Bow: The amendment in the form proposed is, in my opinion, not as it should be, and to get at what the gentleman wants, if he will let the section 12 stand as it is we can then amend section 13, if he desires.

Mr. Collins, of Cascade: I will withdraw it.

Mr. Dixon of Silver Bow: The reason for that is, Mr. Chairman, that that would take away from the Legislature entirely the power over the District, whereas this way it would not.

Clerk then read section 13, as follows: "Until otherwise provided by law said District shall be constituted as follows:

1st District: Lewis & Clarke County.
2nd District: Silver Bow County.
3rd District. Deer Lodge County.
4th District: Missoula County.
5th District: Gallatin County
6th District: Jefferson County.
7th District Custer County.
8th District: Beaverhead and Madison Counties.
9th District: Park and Yellowstone Counties.
10th District: Cascade and Meagher Counties.
11th District: Fergus and Dawson Counties.
12th District: Choteau County."

Mr. Hickman, of Madison: I wish to offer an amendment.

The Chairman: The gentleman from Madison offers the following amendment.

Mr. Collins, of Cascade: Mr. Chairman, I offer an amendment.

The Chairman: The Clerk will read first the amendment offered by the gentleman from Madison.

The Clerk read as follows: "Amend section 13 by striking out the word "and" in the 4th line and inserting the words "9th District" and renumber the subsequent districts

The motion was seconded.

The Chairman: The Clerk will read the amendment offered by the gentleman from Cascade.

Clerk read as follows: "Until otherwise provided by law each of the organized counties in the State shall constitute a separate Judicial District."

The motion was seconded.

The Chairman: The question is on the substitute offered by the gentleman from Cascade.

Mr. Collins, of Cascade: Mr. Chairman, I understand that upon this matter there is a difference of opinion among the Judiciary Committee, and that some of the members of the Committee are in favor of this system. I believe it would be of great advantage to the new State of Montana to make each County—each one of the present counties—and each county that will hereafter be organized—a separate judicial District. We do away entirely with the Probate Judge—abolish that particular officer entirely—and the District Court of each County performs all the duties pertaining to that office. It simplifies matters; it makes less courts, and it facilitates the transaction of business in the courts; instead of waiting term in and term out to have lawsuits settled. Under this system, when courts are open from one end of the year to the other suits will be settled in a comparatively short time after they have been commenced. The system, I believe, has been in existence in California since the date of their new Constitution, and I understand, from lawyers, that it works well,—that it is a great advantage not only to the judiciary but to all the people. I believe that courts would transact their business in less time, with ten-fold less expense, by having a high court in session in each County always. I understand that the judiciary committee feel the same way, only that they think a few counties, one or two probably, have not business enough, nor population enough, to warrant it at present; but I believe the smallest county can well afford to stand the extra expense, if there is any, in the saving it will be to the people.

Mr. Hartman of Gallatin: I am opposed to the amendment offered by the gentleman from Cascade. I am aware of the fact that there are certain counties in Montana whose population and business will justify the establishment and maintenance of a District Court within those counties alone. I am also aware that there are a number, and a considerable number of the counties in this Teritory wherein the business would not be sufficient to justify the payment and maintenance of one District Court. Now, I presume that the different delagates here, representing these different districts, are better posted as to the needs and requirements of the several districts and counties that they represent than I am, but as one of the representatives from Gallatin county to which the judiciary committee have assigned one judge, I desire to enter my protest at this time I know that one live District Court Judge, assigned to the counties of Park, Gallatin and Madison, even if all the Probate jurisdiction has been conferred upon the District Courts, can transact every bit of the business by holding four terms a year in those counties, and then have five months in the year for recreation. Now, it is true, it has been argued, and will be urged upon this floor, that by the abolition of the Probate courts you have contributed to the salary of the District Court Judge the fees and emoluments which have heretofore gone to the Probate Judge and his Clerk. That is true, I admit it, and that thereby, so it is said, this will reduce the pay that you will have to make to the District Judge to a minimum. I am willing to admit that. But here is the proposition, if one man can do the work and do it well, in justice to himself, and in justice to the people of the three counties, is it not the height of absurdity and folly for us to say that there shall be three men to do that work? Now, I am not here posing as a parsimonious economist or anything of the kind; but I do say that when one man can do the work of three counties, and do it well, that we are not treating the people of this State right by paying three men to do it. Now, as to the other Districts of the Territory, I confess I am not so well posted on the business of them as upon these three; but, as for the three districts to which I have referred, I do sincerely enter a protest to this system, and hope that there will be a substitute proposed, at some time during the course of the proceedings, which will make less districts here. Give Lewis and Clarke County a district. I am informed by men who are acquainted with the business here that they are entitled to it, and it is only a question of a short time when they will need more. Silver Bow is in the same condition. Deer Lodge is, I am informed, in the same condition. Take the counties East of here,—many of the smaller ones,—and I do not believe that the people require it,—and while I do say that this arrangement is a good one whereby the work of the Probate Courts is transferred to the District Courts, and the District Judge receives the emoluments of the Probate court, yet why should we contribute that money towards the payment of three men when one will do just as well? I am opposed to the amendment.

Mr. Burleigh, of Custer: Mr. Chairman, the gentleman must remember that these small counties have not yet passed into a state of inocuous desuetude; they are yet expanding; they are growing, and while I would join him heartily in his sentiment, if we were cutting swaddling clothes for an infant; why, I would say cut it down to the minimum—but we are not, these counties are growing, and we expect them to grow amazingly more rapidly. We are not making this constitution for little Custer and little Gallatin counties as they are today. Why, as soon as we have entered as a State, people will come from all over the country here, and it will be necessary to provide for a much more extensive system of litigation than we have today. Now, if I believe that these counties would remain as they are today, I would say "bunch them up," a dozen together, as you do herrings, and dispose of them by the dozen. But why not go in now and provide a system that is matured, so that when the population comes we will be ready to meet them? I think the proposition a good one. I favored it in the committee and I favor it here.

Mr. Hartman, of Gallatin: I do not wish to impose upon the convention, but I wish to answer that argument. I believe in this convention providing for present conditions, and the providing an expansive system here of judiciary that may be expanded to suit the developments of this country. I do not want to see the development of the country retarded, I want to be up to the times, but I say it is a mistake, and a serious mistake, to take a step ten years in advance of the times and endeavor to suit it to the present conditions. Let us make a system that will just suit the present conditions, and make it expansive so that it may develop and fit the conditions of the country as it grows.

Mr. Clark, of Silver Bow: I understand it is provided in this section, as well as the one following, if that be adopted, that the Legislature may provide new districts, that is, may give more Judges to the several Districts as the occasion may require. Now, I think the position taken by the gentleman from Gallatin is a good one. I believe that such counties as Dawson and Yellowstone and Park and Choteau and Fergus, and those outlying counties, that have very little judicial business as compared with Silver Bow and Lewis and Clarke, and these other large counties, are very well and very liberally provided for by the report of the Committee on Judiciary. Now, I believe in having good work and good services, and in giving good pay, and in due time I propose to move an amendment with regard to that matter; but I am not in favor of imposing more districts on this State than is necessary to efficiently perform the business of the Territory or the State. Hence I believe that the plan adopted, as outlined in the report of the Judiciary Committee, is a very fair and liberal one. By the adoption of that report and the rejection of this amendment we will save four Districts to the Territory, which in the aggregate will amount to a good many thousands of dollars. I would rather take that money and pay more to the Judges that are constantly employed. We want efficient talent in all the Districts, and particularly in these large Districts where the Courts are behind from six months to a year and a half with their business,—hence I am opposed to the amendment.

Mr. Witter, of Beaverhead. I do not wish to urge upon the committee the adoption of a motion or a substitute for any part of this section that would seem to be a hardship on any County. I have prepared an amendment relating to our own County, which, if this amendment as offered by Mr. Collins is rejected, I shall offer in behalf of Beaverhead. I believe, and I think I voice the sentiment of our people, so far as I can hear, that it is to the interests of Beaverhead County that it should be a separate District. It is possible that the court would cost a few more dollars than it does at the present time, but at the same time it would be a great convenience, and give us speedy action relative to litigation. I do not know how other counties are situated relative to Justices of the Peace, but in our County we have only two that I can think of at the present time that have served, or that we can get to serve,—only two townships that have Justices of the Peace. All business relative to the courts has got to be brought to Dillon before the Probate Court. Now, if we have to go from Beaverhead County fifty miles to Virginia City with every little matter, in the absence of Justices of the Peace, it occurs to me that the mileage and the necessary expense incurred would be heavier than the difference between the separate court system and the District Court system. I hope that Madison and Beaverhead counties can be set apart in districts separately As to the other counties, I would not interfere with their arrangements, or whatever plans they may have.

Mr. Robinson, of Deer Lodge· This is a proposition that was pretty thoroughly discussed in the Judiciary Committee, and it is true that there were some members who dissented from the voice of the majority of that Committee · While, Mr. Chairman, I was thoroughly impressed with the idea of this system of District Courts, I was in that committee, and still am, in favor of limiting it to the actual necessities and requirements of Montana. I cannot agree with my friend, Dr. Burleigh, and his suggestion would have a tendency to mislead this convention,—that is, in looking at the present situation of Montana Territory with what it may be in future. Now, I would suggest to this committee that this provides just exactly for that change of conditions. If the growth of those small counties is sufficient in the future to warrant the change, and in increase in it is desired, as the gentleman has suggested, then this constitutional provision makes ample provision for that; so that whatever exigencies arise, whenever one of these counties grows to magnitude enough to justify having a judge all the time, they cannot suffer long, but the next ensuing Legislature can make provision for that very thing. If, on the other hand, the conditions are reversel, and any county finds itself unequal to the task of supporting a separate judicial district, and it is desired that more counties shall be attached to any one particular district, it makes provision for that also. It makes provision in case this district should grow large enough that one judge could not do the business, that the Legislature may give them two judges, and it is the same with Silver Bow county, Deer Lodge or any other county. So that this makes provision for all those contingencies. Consequently we want to look at it as it now is under the present condition of affairs. While it may be well enough as a matter of pride to make a district of each county, I do not think it wise to do it. Another provision which should receive consideration is the salaries of these judges. If we increase the districts and make more judges than is necessary it burdens the State with unnecessary expense. Now, then, so far as Beaverhead County is concerned, I am pretty well posted on that. I am in the habit of attending court there about twice every year,—have been for some years,—the business of the district has been cleaned up in the district court in about two weeks; probably the last term they have run a little longer, and I am prepared to say that while these District Court Judges are invested with Probate jurisdiction and all that, on the other hand they are relieved of Supreme Court work They have nothing to do but attend to the business of District Judges. This bill provides that not less than four terms of the District Court shall be held in each of these counties. That gives them ample time. It will give one Judge ample time to clean up all the business of those two counties, both of the Probate Court and general jurisdiction business, and have, as some gentleman suggested, six months of the year to spare. Then I say the work that would be imposed upon the Judge of that District Court, embracing those two counties, or any other two counties embraced in this proposition, would not be one-half the work that the Judge of Lewis and Clarke County has to do, nor would it be one-half of the work that the Judge of Deer Lodge County has to do, or the Judge of Silver Bow District would have to do. Consequently, as it now is, the work imposed on any of those Judges in these districts, in my opinion, would not be one-half the work or one-third the work that the Judges in these other counties, where there is only one county in the District, will have to do. While it would be much more justice, gentlemen of the Committee, to divide Lewis & Clarke County, and give her two Judges, and Deer Lodge and Silver Bow, the same, and according to the work—to the magnitude of it—it would be much more in consonance with reason to give each of these three counties two judges. But the Judiciary Committee were satisfied to try the experiment of one Judge in this County, one Judge in Deer Lodge County, and one Judge in Silver Bow County, notwithstanding the large amount of work that is to be done in those counties. The committee was satisfiel to try the experiment, and if we find when the next Legislature after this meets, that one Judge cannot do the work of each of these counties, we will give them two; and, on the other hand, if in these counties where they are put together in one District one Judge cannot do the work of two counties, why then the Legislature can change it. There cannot be much injury done between now and the next session of the Legislature. So it seems to me that the proposition reported by the Judiciary Committee is the best one that can be devised, and I am opposed to these amendments. This thing was all done thoroughly in the Committee; it was discussed at a great deal of length. The proposition is to meet the present wants of the people of Montana in such a way that the system may be changed to meet the changing wants of the people. We think ourselves we have accomplished that.

Mr. Burleigh, of Custer: Mr. Chairman, the gentleman entirely misapprehends the tenor of my remarks,—I am not shedding crocodile tears over the work of judges or anything of that kind. I say there is not a county where it is not economy, as soon as the ball is put in motion, to provide for a Judge in each County rather than to keep the counties together, and for this reason: In the first place we avoid the salary, the compensation of the Probate Judge; we avoid the compensation of his clerk; we avoid the expense of bringing the jurors from an adjoining county; of sending a distance to subpoena them; and I say there is not an expense today, where there are two counties combined, that, taking the saving which results from having the court confined to the county itself, that is not economy. It is not necessary to go into the future to comprehend that. Take Dawson county and connect it with Fergus county over here, and when you come to take into account the salary of the two Probate Judges, of their clerks, the expense of running the court, subpoenas and mileage of witnesses and of jurors, why, I say it is a great economy, and it is a great economy today, and it will be from the very moment the system goes into operation. I do not care whether the Judges have got to work. They have to take the office, with its burdens, and should do it. So far as my young and able friend here from Gallatin county is concerned, I have no doubt he could do the business, if he were on the bench here, and have time to spare, but there are some of us older, a little stiffer, more rheumatic, and cannot move around very rapidly; and he will find after he has discharged that duty for ten or fifteen years that he will want a little rest. I think it is a matter of economy and will pay today, and so far as the committee agreeing on the proposition is concerned, it was expressly stated in committee that it was better to go into convention here and be referred to the Committee of the Whole, and then the districts that wanted to be divided could make their application, as is being done here now.

Mr. Callaway, of Madison. Mr. Chairman, the gentleman from Beaverhead has stated a proposition to this committee that perhaps ought to be noted. It seems that the judicial calendar, in that county, is so small they can only find two men competent to be Justices of the Peace. If that be true, what is he going to do when it comes to make a District Judge? I know, sir, from the motion made by one of my colleagues from Madison, and seconded by the other, that it is their desire to have Madison county a separate district, and I think they have conspired with my friend from Beaverhead to carry it through. In the Committee of the Judiciary, I opposed this plan, because I believe a more economical and a safer one can be adopted by the convention. One gentleman, I think the gentleman from Cascade, quoted California. Perhaps it would not be improper for me to say that whenever you quote the California Constitution and California statutes you stand upon very ticklish ground, for the whole thing, the California Constitution and the California statutes,—the whole thing from beginning to end, is one conglomeration of nonsense. Now, sir, as the gentleman from Gallatin has well said, we are fixing our people a system whereby three men are employed to do certain work that one man can do just as well. You take the counties of Madison and Beaverhead and any man who is fit to go upon the bench in that District can discharge all the duties that are required by law, both in the District and Probate Courts, and have half of the time left to go fishing and hunting. We have fixed the salaries of the several District Judges in the Counties of Lewis and Clarke, Deer Lodge and Silver Bow, if I mistake not, at $4,000 a year,—in all of the other counties and districts the sum of $3,000 a year, except, I think, in Park and Yellowstone, in which the salaries are $3,500 a year. Now, when you come to Madison and Beaverhead, three thousand dollars, I ask you why you want the people of the counties of Madison and Beaverhead to double the salary when one man can take charge of the duties and perform them well. Then you speak again of California. Gentlemen of the Committee, let me say this to you, let some of these lawyers go to the California reports; the gentleman from Cascade says he understands the lawyers are satisfied with the system of California,—I say I have no doubt the lawyers are,—if they simply want to make business for themselves and inaugurate a system whereby they will be busy all the time they are on the right track. There are reported in the reports of the State of California, commencing from 1880 to 1887, more than ten thousand cases, taken to the Supreme Court of that State. There is not a State in the Union to compare with it in litigation; and I give you the philosophy of it, gentlemen; it is because of the fact of the character of the gentlemen on the District benches, as will probably be the case in Montana, if you adopt this single county system. There will be many exceptions, no doubt, but when their decisions are rendered the people are so dissatisfied that their only remedy is to go to the Supreme Court In the period from 1850 to 1880, 30 years, under the old system of Districts in California, going back to the first time when a lawsuit was a luxury, and passing to the present condition, we find that in 30 years there were about 10,000 cases at least in the Supreme court, and in seven years, under the present system, there are more than ten thousand cases I believe there It is that kind of dissatisfaction that the poor man has no chance against the rich if he feels himself aggrieved. Now, when we come to this proposition, my own opinion is that we should inaugurate a system, when we commence to build out jurisprudence in Montana, that the reports from the courts may be taken and embodied in book form, and they will be of such a character that all the States of the Union would have some respect for them. Go to these small counties Take Madison, and where is your material there for a District Judge of ability and integrity? My friend who sits upon my right,—my colleague,—points to me. Let me say this in reply to him. I have no ambition to be a District Judge. I have never had any ambition for such a position; but suppose I wanted to go on the bench, I could attend to all the business in that county in two months' time every year. Why, gentlemen, in the County of Madison we have had an average there for years gone by of about a week's term of court. There is so little business there,—and I refer to a gentleman who sits within my hearing now to corroborate me,—that if all of the business there is in the county was put into the hands of one lawyer he would not have a respectable income; and yet you say to me that we must have a District Judge whose salary shall be three thousand dollars a year, practically to do nothing. I will not vote for it. I will not vote for a system that the people, in order to settle questions of law, must go as in the State of California, in seven years, with more than 10,000 appeals to the Supreme Court. That Supreme Court is away behind its docket today. Most of these cases of appeal there were criminal matters. The civil business is away behind, and they have their seven Judges of the Supreme Court; they have three commissioners in addition to that: the Supreme Court refers all matters to them, and they write the opinions for the Supreme Court, and yet they are behind. We would do the very same thing if we inaugurate the California system here today. Now, we can be more economical. As some gentleman has well said, let us leave it to the Legislature. If a time shall come in Madison,—I hope it will, for where there are people in business there is always law,—that the time will come and very speedily when we can afford a District Judge, but as to the business there now it would not justify us at this time. For that reason, I am strenuously opposed to the motion of these gentlemen, my colleagues. These people do not know as much about these things as I do, and I would be recreant to my own trust, to those who sent me here, if I did not state these facts to this committee.

Mr. Joy, of Park: I notice that the delegates from other counties are arranging their own districts to suit themselves. I think it is proper they should accord to the delegates from my County the same courtesy. I believe I know what Park county wants. I have talked this matter over with the people there during the past two years, and I know that Park county wants a district by itself, and I have what I consider a promise from the Judiciary Committee that it would be so reported. Through some mistake or misunderstanding it has not been so. If the Probate Judgeship is abolished, we want a resident Judge in Park County. In the first place it will be cheaper for Park county than any other system that can be named. The Probate Court this year in Park county cost the sum of $2,800, and if you pay the District Judge $3,500 it will be but an increase of $700. We will have a Clerk as we have now,—and I want to say to the gentlemen that have made these statements that the Judge who handles the business of three or four counties, and can go fishing two-thirds of the time during the year that if they consolidate two or three counties of the size of Park. he will not have time to go fishing any part of the year. There is not a county east of here but has a year's business on the docket, and I say give us Judges enough for once and let us clean up the docket; let the litigants clean up their cases, dispose of them and get them off the docket. I hope the motion will prevail. So far as I am concerned, I am in favor of it but if it does not go through I have an amendment here which I wish to offer on behalf of Park County. And I suppose all the gentlemen here, if we want a district by ourselves, will give it to us, if we are willing to pay for it.

Mr. Knowles of Silver Bow: There are a good many things connected with the arguments adduced here this evening upon this question that I do not fully understand. Now, the gentleman from Park county, who has just taken his seat calculates that they are not going to have any Clerk of the Probate court there to do Probate court business, and he figures up what they have paid to their Clerk as so much money they will have to spare. Why, the Clerk of the Probate court will perform the Probate court duties just the same as he does now; and, until the legislature changes, just exactly the same fees. Then the gentleman from Beaverhead county talks about taking witnesses over to Madison county,—witnesses, what for? There is no necessity for those witnesses. In one case, upon the hearing of an injunction, witnesses came up here and made affidavits and filed them before the Judge when, under the practice of the courts here they could just as well have made the affidavits and not come up before the courts as to have come. And in relation to the gentleman from Yellowstone county, he wants a judicial system for the future, he wants for these young counties of Montana a judicial robe made to suit them when they are grown up. He reminds me very much of an old friend of mine Major Watson, down in Nevada, who put the harness of a great large horse upon a diminutive jack and when I said, "Major, that is too large a harness for that horse," he said "Never mind, Knowles, that jack will accommodate himself to that harness in less than three days," --(laughter),— so it is with him, he is going to have these counties accommodate themselves to the Judicial system instead of having the Judicial system fixed up to accommodate the counties as they are now. Now, I believe I know something about judicial duties, and I agree with the gentleman from Gallatin here that one Judge can do all the business of the three counties he named, and have a good deal of time to spare and I cannot comprehend the gentleman from Park as to why they want one judge in Park county If one judge can perform all the duties of Park and Gallatin,—and I am sure that unless the business there is a great deal larger than I am aware of,—one judge can do it, because I know what a judge can do,—I have presided over the District courts of this Territory for eleven years and I think I know what a judge can do, and if a judge can perform all of those duties for both of those counties, why give them a judge in each county? Is it a matter of sentiment? If it is just simply a matter of sentiment upon the part of these men, then I certainly don't want to quarrel with them. I am trying to establish here, for this young State of Montana a practical judicial system, one which will be fitted to the wants of these people. Now, in relation to Beaverhead and Madison counties why there used to be a great deal more business in Madison county than there is now; and if one judge performed all the duties for Beaverhead and Madison and Gallatin counties and then attended to two terms of the Supreme court a year and wrote the opinions of that court, and had time to spare, I think it is a ridiculous absurdity for them to ask for one judge for each county. I know that the business of the District court in those three counties did not occupy all of the time of the Judge of that District, even including the time he was occupied with his duties in the Supreme Court. I know that in Silver Bow county today there is more business civil, criminal and probate, than there is in Beaverhead, Madison, Gallatin and Park counties put together, and one judge will perform all those duties. Now, gentlemen there is another matter to take into consideration. You seem to think that because the Territory will probably pay one-half of the salary of these judicial officers that you do not have to pay it. You have only to pay one-half the salaries of these officers. Why, you pay your proportion of it in proportion to your taxable property. You pay your proportion of it just the same, and the gentleman from Park says: "Why, we ought to allow the people of Park to have such a judicial system as they want,"—why, if we are to pay for half of it we want something to say about it; we want something to say if the Territory is to pay half the salaries of these judges. And then what have we got for the salaries of these judges? We have got a judicial system here that is going to cost this Territory in the neighborhood of $50,000 a year right now.

Mr. Robinson, of Deer Lodge: Fifty-one thousand dollars.'

Mr. Knowles, of Silver Bow: A judicial system for which we have to pay fifty-one thousand dollars Then you have got the Clerks to pay for, and they will get fees from litigants Why, gentlemen, we have got a great many other things to look after. How much money can we raise by reasonable taxation on the property in Montana Territory? We have got an Executive Department to pay for; we have got a penitentiary; we have got an insane asylum, we have got a legislative department to look after. Where is all this money to come from; is it to come out of the pockets of the taxpayers? And the gentleman from Park wants just such a judicial system as they fixed up down there in Park. In fixing up this judiciary system it is not to be fixed up by the delegates here in this convention, but by the gentleman and his constituents down in Park. Why, I am opposed to all this sort of talk about letting each county fix up its own system and for myself if I am in favor of any change in the report of this Committee it is to consolidate these judicial districts and put more of them into one district. If they don't suit,—if the child grows, —why, here is the legislature that can cut out new cloth and make a new garment for two years at least,—but for heaven's sake, don't let us put a man's clothes on a poor swaddling infant.

Mr. Joy, of Park: The gentleman from Silver Bow who has last spoken—(interrupted).

Mr. Robinson, of Deer Lodge: There are other gentlemen who want to speak upon this question and, under the rules, until all the members have spoken no member has a right to speak twice.

Mr. Joy, of Park: If there is any objection to my speaking I will retire,—I just want to suggest that the gentleman who last spoke—the gentleman from Silver Bow—has told us a great deal about what he knows, and I wanted to suggest that there may be a few things possibly that he don't know. He has roared and ranted a good deal about the gentleman from Park, and he actually reminded me about that story of the lion and the jackass. A lion and a jackass entered into a combination to go out and search for prey and the agreement was that the lion was to post himself at the mouth of the canyon, the jackass was to go in around the inside and bray and make a loud noise and scare up the game, and the lion was to catch the game as it came out; and after the jackass had performed his part of the contract he came back and found the lion devouring the game. The jackass asked him if he had not performed his contract thoroughly and well, and the lion told him he had, and the jackass asked him if he had not brayed very loudly, and the lion told him he had and the jackass asked him if he had not frightened up a whole lot of game, and the lion said, "Yes, you frightened nearly everything in the country, and if I had not known that you were a jackass you would have frightened me." (Laughter) Now, Mr. Chairman, I want to say here that the honorable gentleman from Silver Bow does not know as much about Park county as he thinks he does, and I want to suggest here, at the start, that the argument he makes does not seem to have a bit of logic in it. Now, if I understand this question, if the Probate court is abolished, there will be no Probate court fees drawn by any person. If the Probate court system is to be abolished and somebody is to keep right on drawing the Probate Judge's fees and the Probate Clerk's salary, I am opposed to the whole thing,—but, as I understand it, nobody is to draw the salary of the Probate Judge or his Clerk. Now, I am in favor of it for one other reason.

Mr. Robinson of Deer Lodge: Will the gentleman allow me to ask a question,—what is the taxable property of Park county?

Mr. Joy, of Park: A little over three million of dollars.

Mr. Robinson, of Deer Lodge: What is the population?

Mr. Joy, of Park: I don't know but I know that last year she cast about 1,750 votes. Park county cast more votes last year than did Gallatin, Yellowstone, Custer, Dawson, Fergus, Meagher or Choteau counties. I want to say that Park county has been a county for a little more than two years. I have been residing there during that time, and long before it was made a county, and if I remember correctly there has been but four civil cases tried in that county for the last two years, and for the sole and only reason that we could not get a judge to sit there long enough to clean up the docket; and when the last term of the District court closed in that county last April there were more cases on the docket on the day of adjournment than there were when the court opened. And I say, in view of this state of facts, we need another Judge. We want a Judge to clean up our business there. A resident Judge,—and I think we know as much about what we do want as the gentleman from Silver Bow knows. He claims to know all about judicial matters, and what he has done and what he can do, but I still maintain he does not know as much about Parke county as he thinks he does, and I want to suggest here, at I say we want a Judge for our county and I think this convention will give it to us.

Mr. Luce, of Gallatin: I do not desire to take up much of the time of the convention. This is one of the most difficult subjects that came before the Judiciary Committee, and elicited a great deal of discussion; and unless this convention shall take a different course from what our Committee did, I don't know that we will ever be able to settle it except by letting each delegation have just such courts as they wish; in other words, if the delegation from each county wants one Judge I suppose they will have to have it. Now, I started out with the idea that Gallatin county might be attached to Park. I found a gentleman from Yellowstone who wanted that county to be attached to Park, and I did not find anybody from Park who was yearning to be joined to Gallatin. Consequently, I made up my mind that we had better put Park and Yellowstone into one District. Then I reached out for a respectable county to be joined with Gallatin, and laid violent hands upon Madison Madison did not want to unite with Gallatin county, for some reason, I don't know what,—and the first thing I knew there was a proposition of marriage between Madison and Beaverhead, and they were married accordingly. Then, as we were running a railroad down in our county across to Butte, I concluded it would be a good plan to have Jefferson attached to Gallatin, but no, it would not work, Jefferson county wanted to be a District by itself and there was no county within reach that would accept a proposition of marriage with the county of Gallatin. Consequently, the poor old District has to stand alone,—and I do say that we could have one county attached to us and one judge to do the business of the two counties You may put any county with Gallatin, and I think one Judge can do the business of it all. Now, then, the proposition is either to let these gentlemen from the several Districts settle their own affairs or else this Convention will have to take the "bull by the horns" and establish these judicial districts. There is another way, and as far as suffering Gallatin is concerned, we don't care if you do impose upon us either Madison, Yellowstone, Park or Jefferson. We would not object to our friend Dr. Parberry's county if it was not so far off,—any county that adjoins us But this is not so serious a matter as the gentlemen seem to imagine You will find that it provides as follows: "That the Legislative Assembly may increase or decrease the number of Judges in any judicial District." It is left to the Legislature after all. If you want two Judges in Silver Bow county, and the Legislature pleases, it will give them to you; and if we find one judge is too many for Gallatin, and we can make the Legislature believe that Park or Madison ought to be joined to us, I have no doubt that the Legislature will join them to us And it goes further and says that they can divide the State or any part thereof into new districts. So I don't see that we will suffer very much You will observe that Dawson and Choteau and Fergus are put into one District. A gentleman came up before the committee from Choteau county and requested that they should have a Judge but the Committee did not feel that Choteau county should have a district to itself. Now, so far as Gallatin county is concerned, I think that at any rate we may join with some other county in the making of a judicial district, and it will be feasible and economical. They say it is economical of course, to abolish Probate judges and all of their fees, but it is more economical if you abolish Probate judges in both counties and have one judge to do the business than it is to have two, so when you are on a question of economy let us go to a reasonable length. There will not be any recalcitant manifestations of disapproval coming from me at least if this convention fixes these districts; but if it is the sense of this convention that we shall have one judge down in our county, and he is a pretty decent fellow, we will get along with him, and, for example's sake, I am satisfied he will not go fishing half the time, even if he has the time to spare.

Mr. J. R. Toole, of Deer Lodge: I move you, sir, that the Committee do now arise, report progress and ask leave to sit again.

Motion seconded.

The chair put the question on the motion of the gentleman from Deer Lodge, and, a division being called for the motion was carried by a vote of 40 to 9.

In convention.

President Clark in the chair.

The convention was called to order.

The President: We will hear the report of the Chairman of the Committee of the Whole

Mr. Carpenter, of Lewis & Clarke: The Committee of the Whole have had under consideration proposition No. 14 and have directed the Chairman to report the same back to the convention, and have same made a special order for Wednesday afternoon at 2 o'clock.

The President: If there be no objection, the report of the Chairman will be received and accepted.

Mr. Carpenter, of Lewis and Clarke: Mr. President the Committee of the Whole have also had under consideration proposition No. 13 in relation to a Bureau of Agriculture and have directed me to report it back to the convention, and recommend that it be not adopted.

The President: If there be no objection, the report of the Chairman of the Committee of the Whole will be received.

Mr. Carpenter, of Lewis and Clarke: The Committee have also had under consideration proposition No. 21 and 22 in relation to Judicial departments, and have directed me to report the same back to the convention, with the request that the Committee be allowed to sit again.

The President: If there be no objection, the report will be received and the Committee will be allowed to sit again.

Mr. Carpenter of Lewis and Clarke: The Committee of the Whole have also under consideration three propositions in relation to the report of the standing Committee on Labor, one in relation to Chinese labor, one in relation to discharged employees, and one in relation to the importation of contract labor, and have directed me to report the same back with the recommendation that they be stricken from the file.

A member: I move that the report of the Committee be adopted.

The motion was seconded.

The Chair put the motion and the same was declared carried.

Mr. Carpenter, of Lewis and Clarke: The Committee has also had under consideration proposition No. 2, the proposed article on labor, and the Chairman asks permission to make a report tomorrow morning.

The President: If there be no objection, the Chairman will be allowed further time in which to make his report on proposition No. 2.

Mr. Craven, of Lewis and Clarke: I move you, Mr. President, that when the convention adjourn it adjourn to meet at 9 o'clock tomorrow morning.

The motion was seconded.

The Chair put the motion and the same was declared lost.

Mr. Collins, of Cascade: I move that the Convention do now adjourn.

Motion seconded.

The Chair put the motion, and the same was declared carried and the convention stood adjourned until Tuesday, July 23rd, 1889, 10 a. m.

FIFTEENTH DAY.

Tuesday, July 23rd, 1889.

The convention was called to order by the President at 10 a. m.

Clerk called the roll.

Mr. Buford, of Madison: Mr. President, Judge Luce being sick this morning I ask that he be excused.

The President: If there be no objection the gentleman will be excused.

The Chaplain offered prayer.

The Clerk read the Journal of the 14th day.

The President: The Chair desires to state that there is a message from the President of the American Sabbath Union,—if there be no objection it will be read.

Mr. Callaway of Madison: I would like to inquire if that communication is from citizens of the Territory of Montana?

The President: It is not.

Mr. Callaway, of Madison: Then I object to the reading of the communication.

Mr. Warren, of Silver Bow: Mr. President I move that it be referred to the Committee on Education to report back.

Motion seconded.

Mr. Eaton of Park: I understand that we are under the regular order of business which provides for the reading and presentation of petitions and memorials. I suppose this is in the nature of a petition and an order providing for the suspension of the rules would be necessary to do anything else but to read this petition. I make that point of order.

The President: The Chair desires to state that it seems to be the impression of the members of this Convention that these petitions and memorials shall be confined to citizens of Montana Territory. The Chair understands that this is the general feeling in regard to this matter, and hence the Chair is of the opinion that these petitions, memorials and remonstrances should be confined to those coming directly from people of this Territory,—unless the convention takes a different view, the Chair will so rule upon that question. Hence, the motion of the gentleman from Silver Bow is in order if it is seconded.

The motion was seconded.

The Chair stated the motion.

Mr. Collins, of Cascade: I would like to hear the petition read for information.

The President: There is an objection to the reading of the paper.

Mr. Rickards, of Silver Bow: I would like to ask how anyone can intelligently recommend that that communication be referred to a Committee unless they know something of the nature of it. I might, with propriety, move to amend by referring it to the Committee on Irrigation. I don't know the nature of it. I do not think this body is prepared to vote for a reference to any Committee unless they know its nature.

Mr. Collins, of Cascade: I think the members have a right to ask for its reading for information. A member may object to its consideration but I do not see how any member can object to its being read for information.

The President instructed the Clerk to read the message. The Clerk read as follows:

Blue Mountain Lake, New York, by the way of Saratoga, July 22nd, 1889.
To the President of the Constitutional Convention, Helena, M. T:

The American Sabbath Union, whose office is at 23 Park Row, earnestly recommend that provision should be inserted in your new constitution encouraging Sabbath observance. Perhaps the following form would be acceptable to the Convention:—"No work or trade shall be carried on on the first day of the week, usually called Sunday except such as may be strictly charitable or necessary, and the Legislature shall pass laws regulating and encouraging the observance of the Holy Sabbath by all the people of the—" (interrupted).

Mr. Hogan, of Silver Bow: I move you, sir, that we dispense with the further reading of the communication

Mr Rickards of Silver Bow: I have heard enough of this reading to warrant me to move an amendment.

Mr. Hogan, of Silver Bow. I rise to a point of order. The question has not been stated.

The President: The question is upon the motion of the gentleman from Silver Bow, that the further reading of the communication be dispensed with.

Mr. Rickards, of Silver Bow: I move as an amendment to the motion that it be referred to the Committee on Education, that the telegram be laid indefinitely on the table.

The motion was seconded.

The Chair put the motion and the same was declared carried.

Mr. Maginnis, of Lewis and Clarke, sent up a report.

The report of the Committee on Miscellaneous provisions and Constitutional amendments will be read. The Clerk read as follows:

Report of the Committee on Miscellaneous subjects, etc:

Mr. President: The Committee on Miscellaneous subjects and so forth, to whom was referred proposition No. 16 by Hammond relating to gambling respectfully report that the subject is one that should be reserved for the Legislative power; they have therefore rejected the proposition, with the recommendation that it do not pass

(Signed) L. H. HERSHFIELD, Chairman of the Committee.

The President: This report will take the usual course

The Clerk read as follows:

Report of Committee on Miscellaneous subjects, etc.:

Resolution No. 10 by Callaway relating to free passes granted by corporations has been acted upon by the Committee who, in lieu thereof, have adopted a substitute which they have incorporated in their report to be presented at an early day. They, therefore, recommend that resolution No. 10 be not adopted.

July 22, 1889. (Signed) L. H HERSHFIELD, Chairman

The Clerk again read as follows:

Report of the Committee on Miscellaneous subjects:

Mr. President: The Committee on Miscellaneous subjects, etc, to whom was committed the memorial from the Methodist Episcopal Conference concerning the establishment of a Sunday law and the prohibition of the liquor traffic, respectfully report that they have given earnest consideration to the memorial cited, and have decided that the question is one which rightly belongs to the Legislative authority of the State; and, in consequence, report adversely on the proposition, recommending that it be not adopted.

July 22nd, 1889.

(Signed) L. H. HERSHFIELD, Chairman of the Committee.

The President: Are there any reports of Select Committees?

Mr. Middleton, of Custer: The report of your Select Committee, to whom was referred resolution No 7 relating to the employment of a Stenographer, is now ready.

The Clerk read as follows:

Report of Special Committee on Resolution No. 7, with substitute:

Mr. President: Your Select Committee, to whom was referred resolution No. 7, relating to the duties and compensation of the chief stenographer, beg leave to report that they have had the same under consideration and report the same back to the Convention with the attached substitute, and recommend the adoption of the said substitute.

(Signed) C. R. MIDDLETON, Chairman.

The following is the substitute referred to:

Substitute for resolution No. 7 offered by the Select Committee:

RESOLVED, That it shall be the duty of the Chief Stenographer to keep a full, true and complete record of all the proceedings of this Constitutional Convention, and within sixty days after the adjournment thereof to file in the office of the Territorial Secretary a full, true and complete typewritten copy of all such proceedings properly paged and arranged, and accompanied by the affidavit of such stenographer to the effect that such transcript is a correct copy of his stenographic notes of the proceedings of the Convention.

That the compensation of the chief stenographer shall be Fifteen dollars for each day that this convention shall actually be in session, and in addition thereto the sum of twenty cents per folio for each folio of the proceedings transcribed as herein provided.

The President: What is the pleasure of the Convention?

Mr. Burleigh, of Custer: I would like to ask the Chairman of the Committee if that report is to include the debates of this convention,—the speeches made here?

Mr. Middleton, of Custer: I will say for the information of the gentleman that the "proceedings of the convention," as I understand it, means the entire proceedings, all that occurs, either in convention, or in Committee of the Whole; the debates, motions, resolutions, votes, &c.

Mr. Burleigh, of Custer: I desire to say, Mr. President, that I will oppose the resolution.

The President: There is nothing before the Convention.

Mr. Bullard, of Jefferson: I move the adoption of the report.

The motion was seconded.

Mr. Eaton, of Park: I rise for information. I would like to ask if the Substitute, as reported by the Select Committee, is not substantially the same proposition that was voted down by this Convention some days ago when the matter was last up?

The President: The Clerk will read Resolution No. 7, to give the gentleman the information he requires

The Clerk read Resolution No. 7 being Collin's resolution.

The President: The question is upon the motion to adopt.

Mr. Middleton, of Custer: Mr. President, the Resolution, No. 7, that has just been read, was not acted upon by the Convention the other day, except by the action upon the Substitute, which had been offered by it, and which was rejected by this Convention. Now, in substance, a portion of the Substitute proposed by this Select Committee is similar to the original resolution as well as to the former substitute that was rejected. However, there is this distinction; it was considered in discussing the matter at that time by some of the members and justly so, that it would be absolutely impossible that there should be a transcript of these proceedings made and placed in the hands of the President within twenty-four hours after the shorthand notes were taken. This Resolution provides that that may be done within sixty days,—provides that a full, true and complete transcript of those shorthand notes shall be filed with the

Secretary of State, accompanied by the affidavit of the stenographer that it is a true and correct transcript from his shorthand notes of all of the proceedings of the Convention. Now, so far as I am personally concerned, I would like to see this resolution adopted, for this reason: the stenographer is here and is going to take these notes, I have positive knowledge of the fact that he has been instructed by different individuals in Helena to take these notes saying that they would pay him at those rates as a private and individual enterprise I submit that in my judgment, it is a matter that the State will want at some time and perhaps very soon, and undoubtedly it will provide for the publication of these debates. I believe it is safe to say that Congress will pay for every dollar of this expense It is something that certainly should be preserved. But two or three States in the Union failed to take the precaution to keep a complete record of their proceedings, and they regret it sincerely now. There is one state—I think it was Kansas—where no provision was made by the Convention for taking or making any record of the proceedings, but a certain newspaper of sufficient enterprise in the city where the Convention was held, put their shorthand reporters in there, and took the proceedings in full, and I am informed that the State afterwards paid to that newspaper $10,000 for the correct transcript of the proceedings of their convention. The Committee have talked this matter over pretty carefully, and have investigated it, and made some inquiry as to about what the probable cost would be and I believe it is safe to say to this Convention that the entire cost of this transcript will be less than $2,000; that it will probably be somewhere between $1,400 and $2,000. Well, now, so far as the expense is concerned, even if Montana has to pay it, it seems to me to be a mere nothing. But I believe beyond any question the State will not have to pay it, and I don't believe that it is right for us as members of this Convention, to say that individuals shall come in here and take this record and pay the stenographer for it allowing it to become their individual private property, and if in the hereafter the State of Montana wants a transcript of these proceedings, to be placed in the position where they will have to pay five, ten or perhaps twenty prices for it. It seems to me the Resolution ought to be adopted. I believe it is as cheap as the work can be done In South Dakota the Convention has provided for two stenographers each at ten dollars a day and twenty-five cents per folio. In Washington Territory, I am informed, they have provided for three stenographers, and here the Convention seems to feel that not even one is wanted. I wish the Convention would give this matter such consideration as it ought to have. I think it is a matter that we should hand into the office of the Secretary of State, to be used by the State in the future as it may see fit

Mr Robinson, of Deer Lodge: Mr. President, when it comes to the expense of this thing, I think the gentleman underestimates what it will cost the State to transcribe the notes of the stenographer in longhand. I think it will on a mathematical calculation average during the session of this convention five hundred folios a day—the proceedings of this Convention that will be reported by the stenographer will probably average five hundred folios a day, which would be $100 a day for the transcript of these proceedings in longhand. If it runs thirty days it would be a matter of $3,000 for a transcript of the stenographer s notes. I understand that the proposition voted on the other day differed from this only in that that required it to be transcribed within twenty-four hours after the proceedings of the Convention. This provides that it may be done within sixty days after the adjournment of the Convention The question that was voted on the other day was not the question of time required to do it, but the question of the necessity of having it done at all, the probable expense it would be to the State in transcribing these notes, and the expense to the State in publishing them, which the Convention, I thought, regarded as entirely useless, and voted it down on the question of principle, and not merely as a question of the time in which they should be transcribed. Now, then, if, as the gentleman says, it will not cost the State anything, I have no objection in the world to having the stenographer transcribe his notes and not look at all to the State for his compensation, but look to the Federal Government, or to individuals who may want to make a speculation out of it I have no objection to his amusing himself in that way whatever, but I do object, Mr. President, to this Convention entailing a dollar's worth of useless expense upon the State of Montana.

Expense that will be of no benefit to us at all I object to. If these reports are going to be valuable, if there is a speculation in it, give some of the citizens of Montana an opportunity of taking it up as a matter of speculation, and let them pay the reporter for transcribing it and getting it out. Then, if he can sell them, let him take the chances of selling the copies of these debates, and make out of the speculation whatever he can. If I want one of those reports, I will pay for one, if we can agree on the price which I imagine, Mr. President, the two of us will never agree to at all. The man that should publish them would probably want $10 or $15 for a copy of them, and most of us would want to give him about fifteen cents and not a farthing more. We regard it as being worth just about that much to us—about fifteen cents, because we can all find something more valuable in future to employ our time than looking back to these debates and reading them. Now, sir, not only that, but there is the cost that is going to be to the State to publish all these proceedings There are men whose eyes are wide open to speculation. It is going to be a good job to a man if he can get a bill through the Legislature to make an appropriation to publish these debates and proceedings. There is going to be a speculation in that. It is much easier generally to get a speculation through the legislature than it is to defeat a thing of that kind. Retrenchment and reform and economy is always difficult in our own private affairs and our own personal accounts and it is more difficult, Mr. President, when it comes to footing the bills of the public. It is much more difficult to adopt reform and retrenchment in those matters because we are voting away other people's money, and many men are reckless about those things; they do not stop to consider that they are in greater duty bound to retrench in public affairs than in their own private affairs; hence, for those reasons, some future Legislature will get up a speculation in publishing these proceedings, and involve the state in a large bill of expense. Now, sir, I can see the way this thing is drifting in the Convention, and there are secret murmurings going around among some of our best financial men as to the probable expense this Convention is going to entail on the State of Montana; and in view of that fact, sir, it is well for us to stop and pause in these things, and to consider for a few moments. We have claimed that we were able to support a state government—an economical state government; but we cannot afford to support the machinery of the state government of New York, Illinois, and many of the larger and richer states. We cannot afford such a machinery of government as that, because it would overwhelm us with a public debt, and the people would be complaining and wish that we had no state government. Add to these things all the large expense of cities as well as individual accounts. Some members say, Oh, well, this is a small matter and let us have it, let us have this thing, that or the other—it is a small matter and let us have it; we can do without it, but it is a kind of luxury and let us have it. Well where that system is pursued, and this thing, that and the other indulged in, at the end of the year when we come to foot the bills we find ourselves bankrupt. That is the way municipalities become bankrupt, and states and national governments and individuals become bankrupt, by indulging in this thing, that or the other that we could very easily and very well do without, but which is a mere luxury. Now then, this thing that we propose to indulge in is a mere luxury, not a necessity to the State Government of Montana. It is a thing merely to suit the whims and caprices and notions of men who think it might be of some future benefit. As I remarked, we are indulging in a system now—gentlemen on the floor of this Convention are advocating propositions one after the other, and when we come to foot up at the end of it, as one of the best financial men of Montana Territory has advised me, as near as he could estimate the cost of it, the expense of the first year of the State of Montana will run up to the sum of $380,000. Now, then, if that is so, or if it is half that amount, if the gentlemen will pause and hesitate on these things, they will come to the conclusion that we ought to try and avoid these useless things, and make expenditures only where they are absolutely necessary, and limit these amounts all we can. If these things become necessary in future, and we are able, and the State grows rich enough and able to afford them, that would be another matter; but we are not able to afford them. My idea is that the whole taxation of the property of Montana for State purposes should not exceed three mills. As I understand it, so far as territorial purposes are concerned, it is confined within one mill, and we should not exceed for State purposes three mills. The way we are going on it we do not mind we will launch ourselves into a position where it will run to five or six mills for state purposes. I say, then, as this thing is useless, let us not put it into the power of the Legislature to swamp us in debt by publishing these reports. We are entailing an expense of probably $3,000 for transcribing them, which I regard as entirely useless, and I trust the Convention will take this view of it.

Mr. Callaway, of Madison: The Resolution now before the Convention is specifically the same as occupied the Convention of five years ago, though I think that this will be less expensive than that. We are today, every minute and every hour, making a part of the history of Montana. Perhaps generations to come and perhaps we ourselves would like to read that history again. To me it will be a matter of more than gratification if I can secure a copy of the resolutions and debates of the Convention that you have the honor, Mr. President, to preside over. In conversation with a gentleman a few days ago, a distinguished gentleman of this territory he asked me if I knew anything of the proceedings of the First Constitutional Convention held in Montana more than twenty years ago, and told me he would give, or he could raise within on hour's time $5,000 if some authentic minutes of that convention could be found, simply as a matter of historical interest. The gentleman who has just taken his seat said the other day when this same subject was under consideration, or rather asked the question, who had read the minutes of the debates of the convention that framed the Federal Constitution? And said that he did not believe that one man in a million had. I consider, Mr. President, that there is more than one man in this convention—more than one in seventy-five holds a copy of the minutes of James Madison and Mr Yates of New York, taken from the debates of our Fathers 102 years ago, and they have given to those who have read the history of that convention a very great amount of information The knowledge that we have derived from those minutes is to us as valuable as any other part of the history of the country. As the distinguished gentleman from Deer Lodge said the other day, it will be a matter of the judicial interpretation of the views of the members of this convention, and as to the interpretation they would give to the Constitution they would be of the very greatest value to the court, which afterwards construe the provisions of this Constitution Why, Mr. President, it is surprising to me that in this age of progress, when we are laying the foundations for a great State—an empire within itself, containing a grand, noble race of men and women, to say that we will not have enough of sense, of decency of manhood to preserve the history of our country! As one of the members of the Committee, Mr. President, I give it my most hearty support, and I hope that this resolution will pass. Going a step farther let me say to the gentlemen of this Convention, that I do not believe that one dollar of the expense of this Convention will be paid for by the State of Montana. I think I can appeal to the distinguished gentleman who has for twelve years honored the Territory of Montana in Congress (Major Maginnis) that it has been the universal rule in all the forms of our government that where a Convention sat under an Enabling Act, that the expenses of that convention have been paid by the United States Government Now, if we keep ourselves within due bounds, and are not unusually extravagant, if there is not sufficient already in the hands of the Secretary to pay the expenses of this convention beyond any question, proceeding from precedent and reasoning from that proposition, Congress will pass an act supplying the deficiency. And these gentlemen talk here about what the expense may be to the citizens of Montana. We are not appropriating any money, we are taking nothing out. The gentleman who proposes to take these notes has agreed to do so upon the suggestion of several prominent and enterprising citizens who have said to him, "We know what it is; we have had it before, you can go on and take the proceedings of the convention in shorthand and transcribe them, and as a matter of private enterprise we will pay you for your services in this matter what you have asked the convention." When we consider, too, that this is a matter for the Legislature exclusively; that if they do not want to pay this gentleman, he has agreed to take his chances—and if I was in the Legislature I would say here and now, sir, I should vote to compensate him according to his proposition, and should consider that we were doing well. We are not binding the Legislature, we are binding no one; and if these gentlemen have any consideration for themselves—if they have any reason to believe that what they have done and said shall be a part of history, I would ask them then why not vote for the proposition as offered by this Committee.

Mr. Rickards of Silver Bow: Mr. President, I believe that we have all made up our minds how to vote on this proposition, and notwithstanding my neighbor's opposition to luxuries, I propose this morning to indulge in a luxury that I never indulged in in my life before, and that is to call for the previous question.

The President: The gentleman has called for the previous question. The question before the convention is, shall the main question be now put.

The question was put and declared carried.

The President: The question now recurs upon the original motion, the adoption of the report of the Special Committee as read.

Mr. Robinson called for a division.

The vote stood forty in the affirmative to ten in the negative.

The Chair announced that the motion was carried, and the report of the Special Committee adopted.

Mr. Carpenter of Lewis & Clarke: Mr. President, the report of the Committee of the Whole is now ready.

The President: The report of the Committee of the Whole on the Article of Labor will be read.

The Clerk read as follows: The Report of Committee of the Whole on Article on Labor. Carpenter, Chairman. To the President of the Convention: The Committee of the Whole has had under consideration Proposition No. 11 on General File, being the proposed Article on Labor, and has amended the same as follows, to-wit: Section 1 is amended to read as follows: Section 1, The Legislative Assembly shall provide for a Bureau of Labor and Industry, to be located at the capital of the state, which shall be under the management of a Commissioner, who shall be appointed by the Governor, subject to the confirmation of the Senate, and shall hold his office for the term of four years, except as otherwise provided by this constitution. Section 2, is stricken out. Section 3 is amended to read as follows. Section 3. It shall be unlawful for the Warden or other officer in authority, or other state officers of any penitentiary, or other reformatory institution in the State of Montana, to let by contract to any person or persons, or corporations, the labor of any convict confined within said institution. Sections, Nos. 4, 5 and 6 respectively are stricken out.

The Committee report the said article, with the amendments, to the convention, and recommend that it be adopted as amended.

Respectfully submitted,
(Signed) B. P. CARPENTER, Chairman.

The President: What is the pleasure of the convention on the report of the Committee of the Whole on the Article on Labor.

Mr. Witter of Beaverhead: I move the report be adopted.

The motion was seconded.

The Chair stated the motion.

Mr. Collins of Cascade: Is an amendment in order at present?

The President: Amendment to what?

Mr. Collins, of Cascade: To the report of the Committee.

The President: Amendments will be in order when it is put upon its final passage. This is simply upon the adoption of the report.

Mr. Hickman of Madison: Mr. President, is there not a mistake in the first section wherein it reads, "Labor and Industry". It seems to me that "industry" was stricken out, and "agriculture" inserted.

The President: The word "agriculture" was stricken out afterwards.

The Chair put the question on the motion of the gentleman from Beaverhead (Mr. Witter) moving the adoption of the report, and the same was declared carried.

Mr. J. R. Toole of Deer Lodge: Mr. President, I move that the rules be suspended, and the Article on Labor placed on its final passage.

The motion was seconded.

The Chair stated the motion.

Mr Collins, of Cascade: I move to amend section 1, by inserting the word "agriculture", so that it shall read "Agriculture, Labor and Industry."

The President: That will come up when it is placed before the convention. The question now is simply to take it up and place it upon its final passage.

The Chair put the question on the said motion to take it up and place it upon final passage, and the same was declared carried.

The President: The Clerk will read section by section. Any amendments desired to be offered will be received in their regular order.

The Clerk read section 1 as follows: Section 1, The Legislative Assembly shall provide for a Bureau of Labor and Industry, to be located at the capital of the State, which shall be under the management of a Commissioner, who shall be appointed by the Governor subject to the confirmation of the Senate, and shall hold his office for the term of four years, except as otherwise provided by this Constitution

Mr. J. K. Toole of Lewis & Clarke: I move to strike out the last words, "except as otherwise provided by this Constitution." I offered the amendment in Committee of the Whole, supplying those words, because as the section then read, I considered them necessary, but the tautology having been changed, the words are meaningless, and simply lumber the section with useless matter

The President Will the gentleman send his amendment to the desk in writing?

Mr. J. K. Toole of Lewis & Clarke: I would like to make an inquiry. Did the Clerk read the section "the Legislature **shall**" provide this office?

The Clerk re-read the section as follows: "The Legislature Assembly shall provide" &c.

Mr. J. K. Toole of Lewis & Clarke That is not correct as acted upon in the Committee "The Legislative Assembly **may** provide." I move to amend that, if that is the report of the Committee.

The President If there is no objection to the amendment, the word **may** will be inserted instead of the word **shall.**

Mr J. K. Toole of Lewis & Clarke Then, I move to strike out these last words, "Except as otherwise provided by this constitution."

The Chair put the question on the motion of the gentleman from Lewis & Clarke, (Mr. J. K. Toole), and the same was declared carried; and the words, "Except as otherwise provided by this Constitution." were stricken out.

The President: The Clerk will read the Article now as amended.

The Clerk read Section 1.

The President: The gentleman from Cascade, (Mr. Collins,) offers to amend section 1, by inserting the word "agriculture" before "labor," on line 1

The motion was seconded.

The Chair stated the motion.

Mr. Witter of Beaverhead. I ask to have the section read.

The President. The Clerk will read the section as proposed to be amended.

Mr Collins, of Cascade. Mr. President, I take it that the action of the Committee of the Whole in striking out the word **agriculture** was because of the fact that the Committee on Agriculture of this Body reported a separate provision, providing for a Commissioner of Agriculture But afterwards, the report of the Committee on Agriculture and the report of the Committee on Labor being almost alike, the Committee struck out almost entirely the report of the Committee on Agriculture Now, "Industry and Labor", or "Industry or Labor" do not include agriculture, and I believe where there is a Commissioner of this class, or of this kind, they always have one on agriculture, or agriculture and labor and industry are combined The Committee reported in favor of a proposition of this kind, and the sense of the Committee was to consolidate them, and they can be better consolidated, in my opinion, by the insertion of the word than by leaving it out.

The Chair put the question on the motion of the gentleman from Cascade, and the same was declared carried.

The President: The Clerk will read section 1, as now amended.

The Clerk read said section 1.

The President: If there be no further amendments, the Clerk will proceed to read section 2.

Mr. Middleton of Custer: Do I understand the rule to be that the ayes and noes may be called on each separate section?

The President: On its final adoption. You can take the ayes and noes on any question, if it is so ordered.

Mr. Middleton of Custer: The matter is now on its final passage, is it not?

The President: I believe it has been the custom heretofore to vote upon the Article itself—to take the ayes and noes upon the Article as a whole; and these sections are read and amended, or passed by in their order, if there be no amendments, considered to be adopted, and then the whole Article is placed upon its final passage, and the ayes and noes placed upon the journal. However, the ayes and noes may be ordered upon any of these amendments, but no section is placed upon its final passage until the whole proposition is placed upon its final passage.

Mr. Middleton of Custer: I desire to have the ayes and noes called upon each separate section of that proposition, I move you to that effect.

Mr. Burleigh of Custer: I desire to offer an amendment in these words: "Whose compensation shall be as provided by law," to be added to the section.

The President: The gentleman from Custer, (Mr. Burleigh,) offers the following amendment to be added to section 1, "Whose compensation shall be as provided by law."

The motion was seconded.

The Chair put the question on the said motion, and same was declared carried.

The President: The Clerk will now read the section as amended, and then the motion to adopt will be placed before the Convention.

The chair read section 1, as amended.

The President: The question before the convention now is upon the adoption of section No. 1. The ayes and noes will be entered in the journal.

The Clerk called the roll.

When the name of Mr. Robinson of Deer Lodge was reached the gentleman rose and said: I desire to saye a word in explanation of my vote on this proposition, which shall be in the negative. I desire ~~to~~ say this; I shall vote against this proposition, the establishment of this bureau, for the reason that I do not believe that the necessities of the state demand it, and it will require a large expenditure of money on the part of the state which we can well avoid for a while. For those reasons I vote No.

The vote stood as follows: Ayes. Aiken, Bickford, Brazelton, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. F. Burns, A. J., Burns, Edward, Carpenter, Callaway, Cardwell, Cauby, Chessman, Collins, Conrad, Cooper, Courtney, Craven, Dixon, Dyer, Fields, Gaylord, Gibson, Gillette. Hartman, Haskell, Hatch, Hickman, Hobson, Hogan, Joy, Kanouse, Kennedy, Knowles, Loud, Marrion, Marshall, Mayger, McAdow, Middleton, Mitchell, Muth, Parberry, Ramsdell, Reek, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole Jos. K., Toole J. R., Warren, Watson, Whitehill, Winston, Witter, Mr. President, —61. Nays. Robinson,—1. Absent. Durfee, Eaton, Goddard, Graves, Hammond, Hershfield, Joyes, Knippenberg, Kohrs, Luce, Myers, Maginnis, Webster,—13..

The President announced the vote, and declared Section No. 1 adopted.

The Clerk read section 2.

Mr. Kennedy of Missoula: Mr. President, as section 2 was stricken out in Committee of the Whole, and a substitute offered for section 3, by Mr. J. R. Toole of Deer Lodge, I move that section 3 be inserted for section 2 of this article.

The motion was seconded.

The President: The gentleman from Missoula, (Mr. Kennedy,) moves that the Substitute offered by the gentleman from Deer Lodge, (Mr. Toole, as a Substitute for section 2, be numbered section 2. The Clerk will read that Substitute for the information of the Convention.

The Clerk read the Substitute offered by Mr. J. R. Toole.

Mr. J. R. Toole of Deer Lodge. Mr. President, I believe the Substitute offered by me was adopted with a very slight amendment in Committee of the Whole, and reported back.

The President. If there be no objection, this section No. 3 will be considered as section No. 2, inasmuch as section No. 2 has been stricken out of the report of the Committee, adopted by the convention.

Mr. Rickards of Silver Bow: Mr. President, if it be in order to offer at this time an amendment, I would like to do so. While I believe in submitting as gracefully as one can to the vote of the majority in some matters, I am not quite willing to vote for the adoption of this section, for reasons as stated yesterday in Committee of the Whole. I would rather that it be stricken out entirely: and if we must adopt something of that character, I have a substitute that I want to offer for it. However, I move that the section be stricken out

The motion was seconded.

The Chair stated the motion.

Mr. Courtney of Silver Bow.. Mr. President, I am opposed to the striking out of that section for the simple reason that we have discussed that question, pro and con, and I believe, spent a couple of hours in doing it yesterday, and it was finally passed by a majority of the convention. That vote was taken after the question had been thoroughly discussed, and I believe now, as I did then, that it is a very essential clause to have incorporated in our Constitution I am very sorry the motion has been moved by the gentleman from Silver Bow now because I know, or I believe at least, it will only have the effect of delaying the passage of this bill I have no reason to think that any person who voted in the affirmative yesterday has changed his mind since I believe the arguments that were adduced then, upon which this section was passed, stand just as good today as they were yesterday and will for years hence. Believing that it is a good section, and also believing it is very necessary, I certainly shall vote to day as I voted yesterday.

Mr. Rickards of Silver Bow: I wish to remind my friend and colleague, that there is not anything in this bill, except section 1, and this section that is before us, for, if my memory serves me correctly, sections 4, 5, and 6 have already been stricken out. Therefore, if it is the judgment of this convention that we shall strike out this section, we endanger nothing, for we have already adopted by our vote, section No. 1. I am in favor of establishing, and voted, as my vote will show, to establish a bureau for labor, but I am not in favor of this Convention attempting to legislate on this question of convict labor; for, as I said yesterday in Committee of the Whole, I feel that we are transcending our duties when we attempt it; and I do hope that we will take this broad view of it, and strike it out entirely. I am in sympathy with a great deal that was said here, indeed, I may say, with all that was said here yesterday about the evils of convict labor, but I do not believe this is the place, or the time to attempt to right the wrong. If we attempt it where shall we stop? For this reason, I believe, that this Convention can safely take this view and expunge it entirely from this proposition.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Rickards), and a division being called for the motion was declared lost by a vote of 15 in the affirmative to 39 in the negative.

Mr. Rickards, of Silver Bow: Mr. President, I move to strike out section 2, and insert in lieu thereof, the following: "The labor of convicts shall not be let out by contract to any person, co-partnership, company or corporation, but the Legislature shall, by law, provide for the working of convicts for the benefit of the state"

The motion was seconded.

The Chair stated the motion.

Mr. Maginnis of Lewis & Clarke called for the reading of section No. 2.

The Clerk read section 2.

The Clerk read the Substitute offered by Mr. Rickards of Silver Bow.

Mr. Rickards, of Silver Bow: It is manifest, that the sense of this Convention is to adopt some such provision as this I believe that my substitute covers all that the original does, and goes a step farther. I believe, if it is important, that we attempt at this time to say that convict labor shall not be farmed out, it is equally important—and I think every argument that can be adduced in favor of one will hold good in favor of the other—that the state shall provide for the working of convicts, and any profit that may accrue therefrom, shall accrue to the state. I do not think it is worth while to attempt to take up your time in showing you reasons why this should be done; I think they are self-apparent. I leave the proposition to the Convention as I present it, hoping that inasmuch as by your vote, you have expressed a desire to enact a provision of this kind, that you will adopt my substitute.

Mr. Carpenter, of Lewis & Clarke: I offer the following resolution.

The President: The gentleman from Lewis & Clarke (Mr. Carpenter), offers the following. Resolved that section 2 be referred to Committee on Labor, with instructions to report a Substitute, providing and specifying the kinds of labor at which convicts may work with the least possible interference with free labor, and in which they may be employed.

Mr. Carpenter, of Lewis & Clarke: I move the adoption of that resolution

The motion was seconded.

The Chair stated the motion.

Mr. Carpenter, of Lewis & Clarke: Mr. President, I want to say just a very few words. I think it is cruel and barbarous to allow convicts to decay in prison without anything to do; after serving their term of imprisonment they come out, not reformed, but worthless, human creatures, as a rule. I am opposed to their doing work that will interfere in any way, except the slightest possible way, with our honest, hard working laboring men. there must be some kind of work that they can do, if we adopt this system at this time. There are few of them comparatively, in the territory now compared with the laboring men, and there must be something that they can do to keep their bodies from decay while they are in prison, and to prepare them to be useful citizens when they come out of prison. If there is a class of labor marked out which they may do for the state, although it is very unproductive, then moral reform will, to a certain extent, take place; a reform that is certainly very desirable; and there will be a great expense saved to the state in the future from the probable conduct of these convicts after their release from prison. If the system is adopted now, in the infancy of the state, labor will know all about it; labor will adapt itself to it; the laboring men will know that in a certain part of the state there is some stone quarry that convicts are working, and the laboring men—and there is plenty of demand for labor in this territory—will adapt themselves to other conditions: will seek other avenues, and these convicts, whether they be digging in a quarry, or leveling a mountain, or excavating an equeduct, or providing something for the benefit of the state, will not interfere perceptibly with any laboring men of the Territory. It seems to me, that the laboring men themselves, so far as they are ably represented in this convention, and the Committee on Labor particularly, who are supposed to know the wants and desires of what are termed laboring men, will be able to specify here something under the broad Heaven that these convicts may be permitted to do for the benefit of their bodies and their souls, and, at the same time, also for the benefit of the state. Therefore, I have offered that resolution, that it be referred to that Committee, to select, if possible, something that they may be permitted to do.

Mr. J. R. Toole, of Deer Lodge: Mr. President, it seems to me that I am compelled again to come to the rescue of the resolution I introduced yesterday, although I am somewhat reluctant to do so; and I am satisfied that it is the only solution we can arrive at in relation to this matter. It only advanced one proposition, that of prohibiting the contracting out of convict labor. It does not prohibit the Legislature at any time, and doubtless the first Legislature, or the second one, or the Legislature at some immediate time in the future, at least, will prescribe some means for employing the convicts, and keeping them in a physically and mentally sound condition, if that is necessary. The gentleman from Silved Bow places himself in a peculiar condition. In the first place, he advocates that we shall not legislate upon this matter; and in the next instance, he introduces a resolution, saying that the Legislature shall provide ways and means, and saying that the Convention shall provide ways and means for the employment of these convicts. He contradicts himself. The resolution I introduced, I believe, leaves the matter in an open, plain, straightforward way, and I am satisfied that unless we do something with this matter, and do it at once that the people will be convinced that we are gerrymandering so much with this convention that we will get nothing at all done. The purport of the resolution as I introduced it, comes from the State of Illinois. It was offered there four years ago and carried by the people of the state, and similar provisions have been made in the Constitutions of other states. It leaves the balance of the matter with the Legislature to decide as they may see best, and leaving it to them to say, the manner and kind and form of work the convicts shall be employed at. But, certainly, looking at the matter from a plain, common sense standpoint, and admitting that the convicts should be employed, the Legislature are the people who are to provide the manner in which they shall be employed. This resolution leaves it to the Legislature. The convention are not in favor of convict labor The resolution that I introduced prohibits that, and, it seems to me, solves the whole problem.

Mr. Maginnis, of Lewis & Clarke: I entirely agree with the gentleman who has just taken his seat It seems to me that the matter is in a proper form now, and the convention ought to abide by it. We do not know what the state may want to do with these prisoners in the future. They may want to build some road across these valleys or mountains; they may want to employ them in boring a tunnel through these hills in order to let the water through There are hundreds of ways in which they may be used that could not be foreseen by this Committee; and I think it is the part of wisdom and a conservative part, to stand by the resolution as shown to be favored by a majority of the convention, and not refer it to any Committee

Mr. McAdow, of Fergus· Mr. President, I believe that this is certainly a subject for legislation. Now, sir, I do not believe that honest labor fears competition. You take an honest laboring man that proposes to make a man of himself, and a home for himself and his family, he lays by his earnings; he gets him a little home, and that home is found by the taxgatherer, and taxes fall heavily upon him. You take the tramp labor that we have here as well as elsewhere, and I do not believe that he deserves any consideration whatever This man will tramp from place to place, he will get employment, and after working a few days, he takes his few dollars, calls for his time, and goes into some rum mill, and there wallows in whiskey until his money is gone and the saloon man casts him out, and he then goes on again and repeats the operation. On the other hand, in our penitentiaries the convicts are generally men physically strong, and to pen these people up inside of walls there where they brood over their imaginary wrongs, they not only decay as the gentleman from Lewis & Clarke says, in mind and body, but, sir, they become insane, many of them, and then they are sent to an asylum as a charge upon the state for their life time. Now, sir, I believe that the penitentiary should be made self-supporting. It can be done, and so far as competition is concerned, it comes into competition with no one but the tramp labor; that I do not believe deserves any consideration whatever. I do not believe that there are any laboring men in this territory today that propose to live here and make their homes here but what would be in favor of making the penitentiary self-sustaining, so that they would not have to pay taxes for these people. I believe, sir, that the Legislature should have the full power to farm out this labor so as to make the penitentiary self-sustaining.

Mr. Courtney, of Silver Bow: I would like to ask the gentleman a question, if it is not a fact that it is tramp labor which produces the convicts of the country.

Mr. McAdow, of Fergus: I think it is, I think they are the very men who produce the convicts; but I do not propose to let these men become insane, and to make them a charge upon the state.

Mr Hogan of Silver Bow: Mr. President, when my friend over there refers to tramp labor I do not exactly know what he means by the term. As a rule, my experience with tramps is that they do not work, and I find that men that earn their living by the honest sweat of their brow are not tramps. I claim, furthermore, that there is no such thing as tramp labor. I say, sir, if a man is here and thrown out of employment, and goes to seek employment elsewhere and cannot get it, and is unable to pay his way and has to travel the best way he can, I say he is not a tramp, but that he is just as good as my friend who calls him a tramp, and deserves just as much consideration at your hands. Now, sir, I claim the bill before you does not interfere with the state. The state can give them any employment they want to, but let them be under the jurisdiction of the state directly It does not prevent the state from taking them out and working them on a road or elsewhere, but it prevents the state from leasing those men at twenty-five cents a day to my friend perhaps. It prevents the state from hiring a man at twenty-five cents when his work pays the contractor a dollar and a half or two dollars a day; and I claim that the proper place for it is in the Constitution. It was submitted to the people of Illinois, and adopted by the people of that state. I do not myself favor convict labor in any form; I claim it is a detriment to the community; but I do favor this bill in preference to leaving it to the Legislature. There is nothing in that bill that prevents the state from working the convicts at anything it may want to work them at. It only prevents them from hiring them or leasing them out to some other person. I think it is right.

Mr. McAdow, of Fergus: I wish to say in reply to the gentleman that it prevents the state from doing anything at all. I understand the amendment of the gentleman from Silver Bow says the Legislature shall do with it whatever in their judgment is feasible and proper. I am in favor of that amendment but I do not propose to adopt any measure which shall prevent the Legislature from employing convicts, or having them employed, because I think it is an injury to the convicts, and cruel to a great extent.

Mr. Witter, of Beaverhead: As I understand, the question now is upon the motion to refer this matter to the Committee again. I am inclined to think that it would be only a waste of time to make such reference. The Committee have discussed these propositions, they have been discussed in Committee of the Whole, and now is a proper time to settle one matter. I hope the motion will be put and lost so that we can go on and discuss this matter either for or against.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr Carpenter), referring the matter to the Committee on Labor and a vote being taken, the motion was declared lost.

The President: The question now recurs upon the amendment offered by the gentleman from Silver Bow (Mr. Rickards), as a Substitute, which was read before the Convention.

Mr. Rickards, of Silver Bow: May I ask simply that that Substitute be read again, and I would like the Clerk to read it slowly. There has not been any disposition on my part to try to annul any part of the Resolution, for which this Substitute has been offered, but simply to go, as I said before, a step farther, and provide that the Legislature shall provide for the employment of convict labor, and that the profit shall accrue to the state

The Clerk read the Substitute of the gentleman from Silver Bow (Mr. Rickards).

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Rickards), moving the adoption of the said Substitute, and a division being called for, the Substitute was declared lost, by a vote of 20 in the affirmative to 39 in the negative.

The President: The question now recurs upon the original proposition. If there are no further amendments, Section No. 2 will be put upon its final passage. The ayes and noes will be entered on the journal.

The Clerk read Section 2 as follows: "It shall be unlawful for the Warden or other officer in authority, or other state officers of any penitentiary or other reformatory institution in the State of Montana to let by contract to any person or persons, or corporations, the labor of any convict confined within said institution."

The vote stood as follows: Ayes—Aiken, Bickford, Brazleton, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. J.; Burns, A F.; Burns, Edward; Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Courtney, Craven, Dixon, Dyer, Fields, Gaylord, Gibson, Gillette, Hartman, Haskell, Hatch, Hickman, Hobson, Hogan, Joy, Kanouse, Kennedy, Knowles, Loud, Maginnis, Marrion, Marshall, Mayger, Mitchell, Muth, Parberry, Ramsdell, Reek, Rotwitt, Sargent, Schmidt, Stapleton, Toole, Jos. K.; Toole, J. R., Whitehill, Winston, Witter, Mr. President—57. Nays—McAdow, Middleton, Rickards, Warren, Watson—5. Absent—Durfee, Eaton, Goddard, Graves, Hammond, Hershfield, Joyes, Knippenberg, Kohrs, Luce, Myers, Robinson, Webster—13.

The President declared the motion to adopt Section 2 as carried.

Mr. J. R. Toole, of Deer Lodge: I move to offer a new section to be called Section 3

The President: The gentleman from Deer Lodge (Mr. Toole), offers a section to be numbered section 3, to be added to the Article on Labor.

The Clerk read same as follows: "Section 3. All state, county and municipal work in the state of Montana shall be done by the day, and eight hours shall constitute a legal day's work for all classes of mechanics and laborers in connection with the same."

Mr. Breen, of Jefferson: I move the adoption of the section.

The motion was seconded.

Mr. Hartman, of Gallatin I move to amend by laying the proposition on the table

The motion was seconded.

The Chair stated the amendment of the gentleman from Gallatin (Mr. Hartman).

Mr. J. R. Toole, of Deer Lodge Mr Chairman, if it be in order to call for the ayes and nays on that motion, I call for the same.

The President: It will require one-fifth of those present to call the ayes and nays

There being a sufficient number to call the ayes and nays, the president declared that the same would be entered on the journal.

The Clerk called the roll, and the vote stood as follows Ayes—Aiken, Bickford, Buford, Burleigh, Burns, A F , Burns, Edward, Callaway, Cardwell, Cauby, Chessman, Conrad, Cooper, Gibson, Gillette, Hartman, Hatch, Hickman, Hobson, Joyes, Kanouse, Knowles, Loud, Marrion, Marshall, Mayger, McAdow, Middleton, Mitchell, Muth, Parberry, Rickards, Sargent, Schmidt, Stapleton, Warren, Whitehill, Winston—37. Nays—Brazleton, Breen, Browne, Bullard, Burns, A J., Carpenter, Collins, Courtney, Craven, Dixon, Dyer, Fields, Gaylord, Haskell, Hogan, Joy, Kennedy, Maginnis, Ramsdall, Reek, Rotwitt, Toole, Jos. K ; Toole, J. R., Watson, Witter, Mr. President—26. Absent—Durfee, Eaton, Goddard, Graves, Hammond, Hershfield, Knippenberg, Kohrs, Luce, Myers, Robinson, Webster—12.

The President announced the vote, and declared the motion of the gentleman from Gallatin (Mr. Hartman) carried and Section No. 3 as offered by the gentleman from Deer Lodge (Mr. Toole) was laid on the table.

Mr Maginnis, of Lewis & Clarke: Mr. President, I move that the article be referred to the Committee on Revision and Phraseology.

The motion was seconded.

The President: Does the gentleman mean that the article shall be first engrossed:

Mr. Maginnis, of Lewis & Clarke: Yes sir, engrossed and referred to the Committee on Revision and Phraseology.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr Maginnis), and the same was declared carried.

The President We will proceed to the consideration of matters under the head of unfinished business.

Mr Callaway, of Madison: Mr President, I move that File No. 1, embracing the Preamble and Bill of Rights, be made the special order for tomorrow at eleven o'clock.

The motion was seconded.

The President. The motion is to make File No. 1 the special order for tomorrow at eleven o'clock, it will require a two-third vote to so order.

The Chair put the question on the motion of the gentleman from Madison (Mr. Callaway), and the vote stood 29 in the affirmative to 5 in the negative

Mr J. R. Toole of Deer Lodge I move we take a recess until two o'clock.

The President: The question is not disposed of yet. The motion to make this a special order having failed to receive two-thirds of the votes of those present, is declared lost. There is a motion before the house, which has been seconded, to take a recess until two o'clock.

The Chair put the question on the motion of the gentleman from Deer Lodge (Mr. Toole), to take a recess until two o'clock, and the vote being taken, the same was declared carried.

The Convention took a recess until two P. M.

Afternoon Session.
Tuesday, July 23rd, 1889.

The Convention was called to order by the President at two P. M.

The Clerk called the roll.

The President: When the Convention took a recess it was engaged in the consideration of unfinished business. That is now the order of business. General File No. 1 will take precedence in the order of business. It is now before the Convention for consideration.

Mr. Callaway, of Madison: Mr. President, I think that General File and Report of the Committee on Education was made the special order for two o'clock today.

The President: Two o'clock on Wdnesday.

Mr. Callaway, of Madison: I would ask unanimous consent that the Committee on Public Lands, &c., be allowed to make its report.

The President: If there be no objection, the report of the Chairman of the Committee on Public Lands will be received and read.

The Clerk read as follows: "Mr. President, the Committee on Boundaries, Public Lands and Homestead Exemptions have had under consideration the subjects of the control and disposition of the public lands, and of homestead exemptions, and have instructed me to report the following articles, and recommend that the same be incorporated in, and form a part of the Constitution.

Public Lands Article ...., Section 1. None of the lands granted by Congress to the State of Montana, for the support of common schools, for the establishment and maintenance of a school of mines, state normal schools, agricultural colleges, a state reform school and a deaf and dumb asylum, shall be sold, granted or disposed of in any manner; but the same may be leased under such regulations as the Legislative Assembly may provide by law not inconsistent with the laws of Congress in force at the time same may be leased.

Section 2. The moneys, profits, and proceeds arising from the public lands shall be used and devoted exclusively for educational purposes, and it shall be the duty of the Legislative Assembly to enforce this provision by appropriate legislation.

Article .... Exemptions. Section 1. The Legislative Assembly shall provide liberal exemption laws.

Respectfully submitted, CALLAWAY, Chairman."

The President: If there be no objection, this report will take the usual course, and be referred to the Committee on Printing, with orders that it be printed and placed on the General File. The convention will now proceed to the consideration of Proposition No. 4 on Preamble and Bill of Rights. The Clerk will proceed to read it.

The Clerk read the Preamble, as follows: "We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a State government, do, in accordance with the provisions of the Enabling Act of Congress, approved the 22nd day of February, A. D. 1889, ordain and establish this Constitution."

Mr. Burleigh, of Custer: I move the adoption of the Preamble.

The motion was seconded.

Mr. Warren, of Silver Bow: Mr. President, as the Substitute for the Preamble has not been disposed of, it is before the House.

Mr. Bickford, of Missoula: Mr. President, I understand that substitute was disposed of and rejected.

—Mr. Callaway, of Madison: I think that the gentleman from Silver Bow (Mr. Warren) is correct, that the substitute offered by the gentleman from Silver Bow (Mr. Dixon) was not disposed of. That vote was never announced, if I remember the fact.

Mr. Burleigh, of Custer: Mr. President, if I recollect right, I asked on yesterday that the vote might be announced—the vote of the day before—and if I am correct it was held that the Substitute was disposed of by the call of the House on the adjournment.

The President: The Chair decided that there was no decision of that question. The Chair did not announce the vote, because there were members present who did not vote. According to the rules, everyone is obliged to vote, unless excused by the convention; so that the matter is not yet disposed of, and may be brought up. It was taken from before the convention; it may be introduced anew.

Mr. Dixon, of Silver Bow: Mr. President, if it is in order, I desire to introduce that Substitute now.

The President. It is in order.

The Clerk read the Substitute of the gentleman from Silver Bow (Mr. Dixon) as follows. Strike out all of Preamble and insert instead, "We, the people of Montana, do ordain and establish this Constitution."

The motion was seconded.

The President stated the motion.

Mr. Knowles, of Silver Bow: Mr. President, the gentlemen who are in favor of this Substitute have been represented as opposed to religion, as being infidels and atheists, and everything of that kind. I wish to say that a great many of them are not, but that they do not believe that the question of religion should be mixed up in any way, shape or manner or form with government. The fact that religion has been mixed up with government in years past has wrought much harm to humanity, wars have been waged, and men in their wrath have proclaimed a disbelief in all religions. The persecutions of the Christians in Rome was on account of the Pagan religion of Rome being considered part of the government. The war that was waged in the United Netherlands for eighty years was on account of religion, the Thirty Years War of Europe was on account of religion; cities were destroyed, the people were murdered and slaughtered in the most inhuman manner It has been represented that the people of France at the time of the Revolution were a most irreligious people. The fact is that they were taught by their churches that they must submit to the powers that be, and when they rose up in their might, they said, if this is religion, that we must submit to these powers that destroy us, that rob us of our substance, that make us beggars upon the highway, that feed us upon black bread then away with all religion, away with your Bible. Today in Russia, because religion is a part of the Government, we have Nihilists, men that rise up and say "down with religion." In the old anti-slavery days in this country, when men said that slavery was according to the Word of God, the old Abolitionists said, let us then have an anti-slavery God, away with your Bible; away with all religion that teaches that slavery is a divine institution. And so, if we put this matter in this Preamble, it is in obedience to a religious sentiment, a sentiment that absorbs the human mind, that will cause men to forsake country and family ties and adhere to their religious convictions. For my part, I would like to eliminate every allusion to religion in a civil government. Then there is another matter in the Preamble, and that is that we are ordaining this Constitution in accordance with an Act of Congress. Some gentlemen seem to have no objection to that. I say we are ordaining this Constitution by virtue of the sovereign power reposed in us as a people entitled to self-government, a people who are entitled to originate their own government, and to establish it upon the basis that it shall be a government for the people and by the people. And it is for these reasons that we are opposed to this Preamble. We are not irreligionists; I know that there are men here supporting the measure who are, but the majority of those in this house who are opposed to this Preamble are not of that class I believe in churches I support churches. I pay money to build churches, and am in favor of the religionists of the country propagating the Gospel. But I am opposed to the mixing up in public affairs in any way of religion I look only to the past I know what it has done in the past, and I know there are people today all over this land whose souls are so wrapped up in the subject of religion that they think they must have it in every institution of the country. We have had to eliminate it from the public schools of the country. If it should be in the Constitution of this land, then put it into the public schools, put it in all of your institutions; do not say you have got it into the Constitution of your country, and yet you exclude it from the schools; let us be consistent It is for this reason that I am opposed to that Preamble, and hope the substitute of the gentleman from Silver Bow county (Mr. Dixon) will prevail

Mr. J. K. Toole, of Lewis & Clarke: Mr. President, I do not understand why it is the gentlemen are so sensitive about that clause in the Preamble, which says that this is done in accordance with the Act of Congress. Now, there is nothing there that renounces in any way the sovereignty of the people There is no gentleman upon this floor who will go farther upon that question, or upon the question of State's Rights than I will, but there is nothing here which says that we do this by the grace of Congress, or by virtue of the Act of Congress. This language was expressly used by direction of the Committee that reported this Preamble. But will anybody say we do not create this Constitution in accordance with this Act, inserting into the very ordinance and into the article itself, certain provisions which this Act of Congress, under which this convention is convened, declares shall be inserted in it? We are simply saying that we do this in accordance with that Act of Congress, which declaration will ever remain as a ready record, by which any citizen of the state of Montana or elsewhere may be able to turn to the Act of Congress under which this Convention was convened. I do not think that there is any departure from established principles with reference to sovereignty upon this question by inserting this in the Preamble. And now, a word, Mr. President, with reference to the main proposition, which seems to agitate so many of the members of this Convention. To every one of them, I accord the perfect right to vote for or against this proposition as his conscience may dictate. So far as I am concerned, I see nothing in the Preamble that is calculated to alarm anybody, whatever his religious convictions may be. It is simply a declaration, the barest mention in the most modest sort of a way of the name of the Supreme Ruler of the Universe. It reminds me very much, sir, and my vote, I believe, shall be controlled very much in accordance with what I learned with reference to a statement of a distinguished gentleman in the city of Minneapolis some years ago. There lived a noted infidel. He had been called on time and again by the religious population of the community to assist in the building of some institution for religious purposes. He had declined as many times, until finally, in order to appease the public sentiment, he proceeded to build a church complete in every detail, and turned it over to the congregation. A meeting was held in it. He was invited to be present, and he came; and the minister, who was then presiding, somewhat on the revival order, arose and asked if there was anybody there that believed in God to stand up. He looked around, and there was not a soul that stood up. Finally he said, if there is anybody here that wants to go to Heaven, let him stand up, and nobody stood up; and as a sort of last appeal he said, if there is a friend of Jesus in this house let him stand up. The old infidel looked around, he saw that nobody was getting up, and finally he got up himself and said, "Mr. Parson, you can put me down as a friend of Jesus, or any other man that ain't got any more friends than Jesus has." (Laughter and applause.)

Mr. Rickards, of Silver Bow: It may indeed seem presumptuous that I should attempt to answer my colleague and neighbor, Judge Knowles. I for one am sorry that this issue has been raised, but I call upon every gentleman upon this floor to witness that the "religious cranks," as we are sometimes sneeringly called, did not raise it. Now, I for one never gave the matter of the recognition of the Diety in this Preamble a moment's thought, until it was laid upon my table from our Committee; and I must say that the modest, simple recognition therein contained seemed to me so pre-eminently proper and right that I never thought that anyone would rise to his feet and call in question the appropriateness of the act. Now, this question and this false alarm has been raised of a union of state and religion. It would seem ridiculous, sir, if it was not said in such seriousness. I say without fear of contradiction that I would impeach the intelligence of this body if I presumed for one moment that you would attempt to unite religion and state, or, if you please, church and state. The idea is ridiculous. Now, my learned friend unquestionably knows a good deal about law, and a great deal about history, but I submit that he knows very little about religion (laughter), when he stands on this floor and says that a simple recognition of the Diety is religion. Why, sir, every man, speaking in a broad sense, recognizes a Supreme Being. The Nomadic subject recognizes the Great Spirit. Is he a religious savage? Nay, I have heard some men, and I am bound to say some on this floor, recognize the Diety, and call upon him, though in a very irreligious manner. Now, Mr. President, it does seem to me that it is time to call a halt when men stand on this floor and raise such false alarms as this. I want to remind Judge Knowles, and all others who may hold to such opinions as expressed by him—for he gave expression here last week to the sentiment that if we retained the few obnoxious words that were there, many of our citizens all over this territory would be offended—I want to remind him that the old Constitution of 1884 contained this same recognition, and the people passed upon it favorably. If there was any complaint, it was a very weak one and I never heard it. I also want to remind him that one of the first acts of this body was to call each member to his feet and take the oath of office, as prescribed by law. Did any one rise to his feet; and object and say that this might be a recognition of Deity, or of God, and offend our constituency? Now, to be consistent, why the oath of office? Why any oath in our courts of justice? Is the term the oath is clothed in "so help me God," a union of religion and state? Then, sir, if it is, Judge Knowles has been from time almost immemorial for I have heard of him almost since Montana has been Montana, guilty of trying to make a union of church and state. Do you say "foolishness"? Yes, I admit it, but that is the line of argument that has been advanced on this floor. Now, since this question has been raised, I say all honor to this Committee, having before them the experience and the Constitutions of other states, that they thought it wise and proper, to incorporate this simple recognition of God in this Preamble. I have examined the Preambles of all of the States of the Union, and I hold in my hand a memorandum, it is too lengthy to read, unless some one calls for it, and I make the statement that twenty-seven of our states have this recognition of Deity in their preambles, and some of them have gone farther than this, and recognized the Lord Jesus Christ. Now, sirs, these twenty-seven states commenced back as far as the history of this Nation. In 1776, Connecticut recognized Almighty God in her preamble, and as late as 1879, and in the Constitution of Connecticut in 1818, we see this same recognition of God. Now, sirs, in conclusion I would not take up one moment of your time if this issue had not been raised; but it has been raised, and every one must stand in my place and ask this body, "let us, grateful to Almighty God," if you please, that it has pleased our constituency to repose so much confidence in our integrity and ability to frame a Constitution for this grand and glorious incoming State of Montana, rise to the importance of the occasion, and I predict that ninety-five per cent of our constituency within the bounds of Montana will say of us on this proposition alone, "well done." (Applause.)

Mr. Middleton of Custer: Mr. President I move you that the previous question be now called for.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer, (Mr. Middleton,) and a vote being taken the same was declared carried.

The President: The Question is upon the adoption of the Substitute offered by the gentleman from Silver Bow, (Mr. Dixon).

The Chair put the question on the said motion of the gentleman from Silver Bow, (Mr. Dixon), and a division being called for, the Substitute was declared lost, by a vote of 23 in the affirmative to 44 in the negative.

Mr. Callaway of Madison. Mr. Chairman, I desire to offer a Substitute for the Preamble

Mr. Maginnis of Lewis & Clarke: Mr. President, I believe it is the rule that when the previous question has ben moved and seconded no further amendments are in order. I now move the previous question again on the question.

The motion was seconded.

Mr. Collins of Cascade. The amendment of the gentleman from Madison was presented first, I believe.

The President It was not seconded; if it was it would be in order.

Mr Maginnis of Lewis & Clarke: Mr. President, I withdraw my motion, as a matter of courtesy. I wish to say, however, that all these motions seem to be in the nature of dilatory; but in order that no gentleman shall feel himself aggrieved or cut off, I withdraw the motion.

The President: The Clerk will read the amendment offered by the gentleman from Madison.

The Clerk read as follows: Preamble offered by Callaway; "We, the people of Montana, in order to form a more perfect government, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the State of Montana.'

Mr. Callaway of Madison: I move the adoption of the Substitute.

The motion was seconded.

The Chair stated the motion.

Mr. Middleton, of Custer: Mr. President, I rise to a point of order. I understand the rule to be, that when the previous question has been put, the motion on the question called for and put, and the vote is in the affirmative, that it stops all debate and further amendments.

The President: The amendment was offered before the motion for the previous question was moved.

Mr. Middleton of Custer: The previous question as put on my motion would have the effect to bring the convention to a vote upon the amendments then pending, and immediately thereupon a vote upon the main question, according to Rule 13.

The President: The point of order of the gentleman from Custer is well taken, and no further amendments may be allowed. The question before the convention is now upon the adoption of the preamble, as read.

The Chair put the question on the adoption of the preamble as read, and a vote being taken, the same was declared carried.

The Clerk read Section 1, as follows: Article 1. A declaration of the Rights of the People of the State of Montana. Section 1. That all political power is vested in and derived from the people; that all government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

There being no amendments to Section 1, the Clerk read Section 2, as follows: Section 2. That the people of this state have the sole and exclusive right of governing themselves, as a free sovereign and independent state, and to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the constitution of the United States.

There being no amendements to section 2, the Clerk read section 3, as follows: Section 3. That all persons are born equally free, and have certain natural, essential, and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property, and of seeking and obtaining their safety and happiness in all lawful ways

There being no amendments to section 3, the Clerk read section 4, as follows: Section 5. That the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed, and no person shall be denied any civil or political rights, privileges or capacity, on account of his opinions concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace or safety of the State, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend or support any ministry, or place of worship, religious sect or denomination, against his consent; nor shall any preference be given by law to any religious denomiation or mode of worship.

There being no amendments to section 4, the Clerk read section 5, as follows: Section 5. That all elections shall be free and open, and no power, civil or military shall at any time interfere to prevent the free exercise of the right of suffrage.

There being no amendments to section 5, the Clerk read section 6, as follows: Section 6. That Courts of Justice shall be open to every person, and a speedy remedy afforded for every injury of person, property, or character; and that right and justice shall be administered without sale, denial or delay.

There being no amendments to section 6, the Clerk read section 7 as follows: Section 7. That the people shall be secure in their persons, papers, homes, and effects, from unreasonable searches and seizure; and no warrant to search any place or seize any person or thing, shall issue without describing the place to be searched, or the person or thing to be seized, as near as may be, nor without probable cause, supported by oath or affirmation, reduced to writing.

There being no amendments to section 7, the Clerk read section 8 as follows: Section 8. Criminal offenses of which justices courts and municipal and other courts inferior to the district courts have jurisdiction, shall be prosecuted by complaint.

There being no amendment to section 8, the Clerk read section 9 as follows: Section 9. Criminal offences of which the district courts have jurisdiction shall be prosecuted by information after examination and conviction by a magistrate, or by leave of the court, or by indictment, without such examination or commitment or without such leave of court. A grand jury shall cosist of seven persons of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall in his discretion consider it necessary, and shall so order.

Mr. Joyes of Jefferson sent up an amendment, which the Clerk read as follows: Motions to amend sections 8 and 9, article 1, by substituting the following. Section 8 no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia when in actual service in time of war or public danger, all other cases shall be prosecuted criminally by indictment or complaint.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Jefferson, (Mr Joyes,), and a vote being taken, the same was declared lost.

Mr. Kanouse of Meagher I move to amend section 9.

The President. The gentleman from Meagher moves to amend section 9, by striking out the word "conviction" and inserting "commitment" in lieu thereof.

The motion was seconded

The Chair stated the motion

Mr. Kanouse of Meagher That refers to line 2, of section 9, where it reads, "Criminal offences of which the district courts have jurisdiction shall be prosecuted by information after examination and conviction by a magistrate." It seems to me that that word "conviction" should read "commitment". It would be a strange sort of proceeding to prosecute a criminal for an offense of which he had already been convicted.

Mr. Middleton of Custer. That is undoubtedly a mistake. The printed copies, Mr. President, did not get here until just before the convention met at two o'clock, and the Committee had no opportunity to compare them.

The President: If there be no objection the correction will be made.

Mr. Burleigh of Custer. I think it should be stricken out altogether. It is not necessary at all. I therefore move to strike out the words "and commitment".

The motion was seconded

The Chair put the question on the said motion of the gentleman from Custer, (Mr. Burleigh,) and a vote being taken, the same was declared lost.

Mr. Carpenter of Lewis & Clarke: Mr President, I move to strike out in the second line of section 9, the words, "or by leave of the court". I do not understand what those words mean there. They seem to me to have no meaning whatever.

The motion was seconded

The Chair stated the motion.

Mr. Dixon of Silver Bow: Mr. President, I think those words are important, and should be left there. It is intended to apply to crimes that might be committed during a session of court when the expenses of examination and commitment by a magistrate would be entirely unnecessary when the court might have the discretion of filing a commitment without going to the expense of preliminary proceeding by a magistrate. It seems to me they are very necessary. So, too, there might be cases in which the magistrate might fail in his duty. I think the clause is important, and that it will be found in practice to be very useful and a great saving of time, and an unnecessary delay and expense involved in preliminary examinations.

Mr Carpenter of Lewis & Clarke. I cannot well see what those words mean, even after the explanation of the gentleman. They seem to me entirely improper, and have no meaning at all in this connection. Further, if he means the district attorney is going to be advised by the court to examine the case, and have him examine him and pre-judge the case before it goes to trial, it would still be decidedly improper.

Mr. Knowles of Silver Bow: A judge can act, under our law, as a committing magistrate, and after a party has been examined before one committing magistrate he cannot be examined before another committing magistrate. Now, as a matter of practice, and which would probably be provided by law in all cases of examination before a committing magistrate the evidence will be reduced to writing, and that evidence, where the committing magistrate has failed to bind over the party to appear before the court, may be submitted to the judge, and the judge upon examination of that matter may say, "Why here this man ought to have been held to answer before the grand jury," and will so order. Now, that was the idea of putting that provision in, and that was all there was of it.

The Chair then put the question on the motion of the gentleman from Lewis & Clarke, (Mr. Carpenter,) and a vote being taken, the same was declared lost.

Mr. Whitehill of Deer Lodge: In line 4, I move you that the word "seven" be stricken out, and "twelve" inserted; and that the word "five" be also stricken out, and the word "nine" inserted thereto.

The motion was seconded.

The Chair stated the motion.

Mr. Carpenter of Lewis & Clarke: If it is in order I move to strike out that sentence.

The motion was seconded.

The President: The gentleman from Lewis & Clarke moves to amend by striking out the sentence, beginning at the latter part of line 3, and ending at the latter part of line 4, as follows: "A grand jury shall consist of seven persons, of whom five must concur to find an indictment."

The Chair then put the question on the said motion of the gentleman from Lewis & Clarke, (Mr. Carpenter,) and a vote being taken the same was declared lost.

The President: The question now before the convention is on the motion of the gentleman from Deer Lodge, (Mr. Whitehill,) to strike out the word "seven" and insert theretor "twelve."

Mr. Witter of Beaverhead: I move to amend the amendment by striking out the word "twelve" and inserting "nine".

The motion was seconded.

The Chair stated the motion.

The Chair put the question on the said motion of the gentleman from Beaverhead, (Mr. Witter,) and a vote being taken the same was declared lost.

The President: The question now recurs upon the amendment offered by the gentleman from Deer Lodge, (Mr. Whitehill,) that the words "twelve" shall be inserted instead of the word "seven".

The Chair then put the said motion to the convention, and a vote being taken the same was declared lost.

Mr. Reek of Deer Lodge: I wish to offer an amendment.

The President: The gentleman from Deer Lodge offers to amend section 9, by changing the word "seven" in the fourth line to "nine", and the word "five" in the same line to "seven". I would say to the gentleman from Deer Lodge, that the question of striking out "seven" and inserting "nine" has been disposed of in the motion of the gentleman from Beaverhead, which was lost. Does the gentleman wish to have the remaining part of his amendment placed before the convention?

Mr. Reek of Deer Lodge: I did not understand the word "five" was included in the amendment.

Mr. Kanouse of Meagher: I move to amend section 9.

The President: I see by the printed copy, which I hold, that there are two sections marked section 9, and the Chief Clerk has just explained to the Chair that the first section marked section 8 is a part of it, and that section 9 follows; so that we are really offering these amendments to section 8. instead of section 9.

Mr. Kanouse of Meagher: The amendment just offered will apply to section 8.

The President: The gentleman from Meagher, (Mr. Kanouse,) offers to amend line 3 in section 8 as it is now by striking out the words, "without such examination or commitment, or without such leave of court."

The motion was seconded.

Mr. Kanouse of Meagher: My only reason for offering that amendment is that it seems to be superfluous. I cannot understand what business it has in that connection, unless it be the sense of the convention that it is necessary to have it. It seems to me to be unnecessary.

Mr. Dixon of Silver Bow: I think the gentleman misapprehends the intent of that provision. When an information is to be filed it will be after commitment by a magistrate, or by leave of court. But a grand jury may indict without any leave of court, or without any previous examination by a magistrate.

The Chair then put the question on the said motion of the gentleman from Meagher, (Mr. Kanouse,) and a vote being taken, the same was declared lost.

The President: If there be no further amendments to section 8, we will pass to section 9 of the printed copy, being the second section numbered 9.

The Clerk read said section as follows: Section 9. That treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort, that no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; that no person shall be attainted of treason or felony by the Legislative Assembly; that no conviction shall work corruption of blood or forfeiture of estate: that the estate of persons who may destroy their own lives shall descend or vest as in cases of natural death.

There being no amendments to section 9, the Clerk read section 10 as follows: Section 10. That no law shall be passed impairing the freedom of speech; that every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact.

There being no amendments to section 10, the Clerk read section 11, as follows: Section 11. That no ex post facto law, nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises or immunities shall be passed by the Legislative Assembly.

There being no amendments to section 11, the Clerk read section 12 as follows: Section 12. That no person shall be imprisoned for debt except in such manner as may be prescribed by law; upon refusal to deliver up his estate for the benefit of his creditors, or, in cases of tort where there is strong presumption of fraud.

There being no amendments to section 12, the Clerk read section 13, as follows Section 13. That the right of any person to keep or bear arms in defense of his own home, person and property or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Mr. Burleigh of Custer: Mr. President, I desire to call the attention of the convention to a difficulty that has existed in many of the counties in regard to the carryng of concealed weapons. The object of the law to prevent the carrying of concealed weapons is to obviate and prevent these quarrels in the streets, by which many lives are lost, and great danger to the persons is inflicted, and it has been held by a great many of our inferior courts that it is no violation of the law when a man does not keep the weapon concealed in his pocket. I would like to call the attention of the convention, without making any suggestion as to the remedy, of what seems to me an important measure in preventing the carrying of deadly weapons in towns or cities, whether concealed or not. It would certainly prevent a great deal of crime, a great many outrages, a great deal of personal injury and a great many lives. I would like to hear from some of the members of the convention on the subject

No action being taken on the suggestion of the gentleman from Custer, the Clerk proceeded to read section 14 as follows: Section 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner.

There being no amendments to section 14, the Clerk read section 15 as follows: Section 15. The use of all water now appropriated or that may hereafter be appropriated for sale, rental, distribution or other beneficial use and the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same shall be held to be a public use.

Mr. Carpenter of Lewis & Clarke: I offer an amendment to add to that section.

The President: The gentleman from Lewis & Clarke offers an amendment to add to section 15. "Private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury, and such amount together with the expenses of the proceeding, shall be paid by the person to be benefited."

The motion was seconded.

Mr. Carpenter of Lewis & Clarke: I offer that amendment because there is no provision whatever in regard to private roads. A person may get a section of land somewhere, and a needy person at that, where it is hemmed in in such a way that there is no possible opportunity to make use of it. This provision in regard to private roads has within the last thirty years been introduced in almost every constitution that has been passed and I understand it was intended to be introduced here; but there is no provision in section 14 or 15 in reference to a private road, which may be determined to be a matter of necessity, and to be paid for in advance, as this amendment provides.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, (Mr. Carpenter) and a vote being taken the same was declared carried.

The Clerk read section 15 as amended.

Mr. Collins of Cascade: I would like to inquire if the word "jury" in that amendment means twelve persons.

Mr Carpenter of Lewis & Clarke. I suppose it means such a jury as is recognized by this Constitution.

There being no further amendments to section 15, the Clerk read section 16 as follows: *Section 16. That in all criminal prosecutions* the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

There being no amendments to section 16, the Clerk read section 17 as follows: Section 17. That no person shall be imprisoned for the purpose of securing his testimony in any case longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial he shall be discharged upon giving the same; if he cannot give security his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel.

Mr. Carpenter of Lewis & Clarke: Mr. President, I offer an amendment to that section.

The President: The gentleman from Lewis & Clarke offers an amendment to add to section 17 as follows: "Or without their presence if they shall fail to attend the evamination, after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on the trial if the witness shall be dead or absent from the Territory."

The motion was seconded.

Mr. Carpenter of Lewis & Clarke: Mr. President, the reason I offer that is, that section 17, as it stands now, would amount to nothing, because it requires that the deposition shall be taken in the presence of the accused and his counsel. The accused can defeat it by simply not appearing. This is added so that on reasonable notice the deposition may be taken without their presence. This is a notice that the Legislature shall prescribe If the accused shall not appear, it can be taken without his presence. Now, then, there is another reason why the latter part should prevail, and that is that there is no provision here for the deposition being used in evidence. This latter section provides that if the witness is dead or out of the state that the deposition may be offered in evidence, that is, if the witness were dead or absent from the state so that his testimony could not be obtained.

Mr. J K. Toole of Lewis & Clarke: I consider this, Mr. President, the most dangerous departure that has ever been made from established principles in courts of justice. I submitted some remarks the other day upon this proposition when it was before the convention, and I undertook to show that the original intention of the Constitution of the United States, when it provided that the defendant should be entitled to meet the witness face to face meant something more than meeting him before the committing magistrate. I am ready here and now to assert that that is the established doctrine, as determined under the Constitution of the United States, which is applicable only in cases arising under the constitutional laws of the United States, and in the territories of the United States That is the construction that has been given to it by courts of the highest respectability, which hold that it is in compliance with the constitutional provision if the defendant has been permitted to meet the witness face to face before the committing magistrate where he had the opportunity to cross examine, and that, in all probabilty, would be the holding of the courts of the State of Montana, under the Declaration of Rights, which is here presented. But I seek to evade a construction of that kind. Here you take it out of the possibility of the courts to determine any such proposition as that by providing in express terms that this evidence may be used against the defendant upon the trial of that cause. I take it, sir, as it has been suggested here, that this will result in all probability in saving some costs and expense to the several counties of this territory, and of the State of Montana, by reason of a provision by which the witness will not be kept in jail, and that it will also be a great benefit to the witness himself, because of the fact that he will be able to give this bond, which is provided for, or have his deposition taken, as the case may be. I do not believe, sir, that there is any constitutional authority, to support that by which you can take a witness and put him in jail, and compel him to linger there and languish, as was portrayed here the other day by gentlemen who are in favor of this proposition. I think, sir that the witness is at least entitled to the same consideration that the defendant himself is, and that would be to a speedy and impartial trial, if there is any charge or evidence against him; but certainly to take him and incarcerate him in prison is without authority under the constitution; and although the Legislative Assembly of this Territory has provided for it, and it is perhaps provided for in other sections of the country, I do not consider it is legislation following within the scope of the constitution. But to say that under this provision of the constitution, which guarantees these men the right to meet these witnesses face to face, that you may go off to the county jail, or elsewhere, and in the presence of the two or three or four persons, and in the presence of the accused, take his deposition which shall be brought into court and there used against him instead of allowing him to meet the witness face to face, is saying something, sir, that was never intended by the constitution of the United States, and which ought not to be permitted under this Bill of Rights As I said the other day, this is a right which ought to follow the defendant all the way through in a criminal prosecution, in the prosecution before the committing magistrate, and upon the final trial in order that the jury summoned on their oaths to try and determine the guilt, or innocence of that defendant, may look as well into the face of this witness and ascertain whether or not he is telling the truth. It frequently happens, sir, or might happen that a witness taken out to some place away from the solemnities of the law, out from under the eye of the court and the jury and the multitude, that he might be able to tell a fair and plausible story, but that if he was subjected to the cross examination before a court and jury where they might look into his face, that he would break down under the fire of the cross examination, which might be had under such solemnities. I perhaps said all that I could say in reference to it upon that occasion, but when this question was once up in a state court there was an argument presented by a distinguished lawyer of his time, Judge Uriah Wright of the State of Missouri, who was attacking the very proposition, which is laid down under the decisions with refernce to the constitution of Missouri, and I will read to the convention what was said by him, although the court determined then that meeting the witness before the committing magistrate where he was cross examined was a sufficient compliance with that provision. But I want to relieve this question of the additional embarrassment, which is sought to be placed upon it by this additional section, which goes further and says that the testimony may be taken at any time and used against him. It never was intended, sir, that it should go farther than to say that the testimony might be used where the witness had died, or where, for instance, he had gone out of the state and was away from the jurisdiction of the court. Here was what was said by the gentleman in the Supreme Court of the State of Missouri, and it strikes me, sir, it is conclusive, so far as argument is concerned. (Reading) "'The 'accused' shall meet the 'witness face to face.' He shall thus meet him in all criminal prosecutions; that is the right. A meeting might involve only presence, contiguity; but that is not enough. It shall be a meeting in the mode and fullness in which man must meet his God in the day of final judgment, and that is, 'face to face.' The whole purpose of the provision is to thwart falsehood. If perjury were impossible, the provision would be without meaning. Two objects were secured by the words, first, the witness must look upon the accused, the intended victim of a false oath, that he may see the value of what he is about to destroy, and the accused shall look upon the witness as he swears; second the triers shall look upon the false witness and gather the perjury from his aspect. The means are simple, but human experience has established their efficacy as tests of truth. They invoke only moral power, but that after all is the highest power. It is hard to say which of the two instrumentalities is the greater. "And the Lord turned and looked upon Peter; and Peter went out and wept bitterly." (Luke, Chap 22) When affidavits were read to Mary of Scotland, in prison, imputing to her great crimes, the unhappy queen said: "Who are the witnesses?" (for their names were not given) "Bring them before me, and they will for swear their falsehoods when they meet me face to face." The other instrumentality (the right of the triers to look upon the witness) is auxiliary to this. It brings knowledge of whatever is accomplished for innocence by the prior means home to the right quarter, and in the right way. But its function does not stop here. It acts independently of the rules of evidence, by its own inherent power; and sometimes renders a right derived from those rules unnecessarily. Thus the inspection by the jury of a witness may dispense with a cross-examination; but when this fails it becomes auxiliary also to the rules of evidence, and gives to the right of cross-examination derived from those rules (not from the constitution) a power which it could not have without it. It is thus sufficiently manifest that the status of a 'witness' in a criminal prosecution, while it creates no rule of evidence, secures to any man accused of crime the largest amount of impunity from the operation of those rules which justice can allow.

"When and where shall this meeting transpire? Not in the secret chamber of the Grand Jury—not when complaint is made before a justice preliminary to a warrant; but whenever and wherever a 'criminal prosecution has ceased to be a proceeding ex parte, and has taken the matured form of a legal accusation of crime, and the witness is brought to sustain it. In all 'criminal prosecutions,' the right shall obtain, says the bill of rights. The words embrace, I think, every form of 'criminal prosecution' known to our laws. In prosecutions by presentment or indictment, the additional right of a speedy trial by a jury of the vicinage is given; but I am not prepared to say that the right to meet the witness 'face to face' is confined to that tribunal. Doubtless this security was mainly intended for the hour and place of actual peril, when liberty and life should be in greatest jeopardy, when the accused should stand before a tribunal having power over either or both; but the words are broad enough to cover the initiate prosecution, wherever and whenever it takes the matured form of a legal accusation of crime. And the same words, as well as the reasons on which they rest, carry the right through every stage of the 'criminal prosecution,' so long as the 'witness' can by the mode of procedure be brought 'against' the accused, While the 'witness' may swear he shall swear 'face to face' with the accused. The security lasts as long as the peril and the protection never ends until the peril is merged in judgment.

"I deem it very fit to put a like question touching other and kindred rights secured by the same pregnant section of the bill of rights. How often shall the accused have counsel, and where? If he once have counsel, is the constitution satisfied? If he has counsel before the examining court, may counsel be denied him before the jury? If once before a jury he have counsel, may he be deprived of counsel on the second trial? How often may the accused have the right of trial by jury, If once a jury be impanelled in his case, is the constitutional guaranty at an end? May he be denied that tribunal afterwards? If the jury bring no verdict and are discharged, or if the verdict be set aside, may that constitutional 'bulwark' be from that time abandoned as having done its office, and the State proceed to judgment by a simpler and more summary process? How often shall the accused have the right to compulsory process to force the attendance of his witnesses? May the process be denied him if once invoked? These questions answer themselves. No power in the Government can rob him of counsel in a 'criminal prosecution' at any one of a hundred trials of the same cause. The jury must come a hundred times; if there be as many trials; and in all of them the compulsory process must go for his witnesses; and at every trial the witnesses against him must meet him 'face to face', that he may look for the hundredth time upon the witness while he swears, and every jury may see the manner of the swearing.

Now, Mr President, it seems to me, that if this section is passed, which proposes to put it into the power of the prosecuting attorney to go to jail and take the deposition of a witness, or to go to a law office in this city, and take the deposition of a witness, and permit that deposition, as is proposed by the amendment of the gentleman from Lewis & Clarke who just offered it, to be read in evidence, that you take away from the accused all the safeguards that were designed in the first instance by the constitution of the United States, and which ought to be designed by this Bill of Rights to throw around the accused. I think, sir, it is a departure from established principles that ought not to be tolerated in this convention.

Mr. Maginnis, of Lewis & Clarke: Mr. President, I think this matter ought to be left to the Legislature and I offer the following substitute.

The President: The gentleman from Lewis & Clarke offers as a substitute for section 47, "That no person shall be imprisoned for the purpose of securing his testimony, except as provided by law."

The motion was seconded.

The Chair stated the motion.

Mr. Carpenter, of Lewis & Clarke: That would be simply equivalent to striking it out, because whether that resolution passes or not, the Legislature would still have the power to imprison witnesses. The question has been whether the criminal shall be punished, or the innocent witness punished.

Mr. Maginnis, of Lewis & Clarke: Well, do not you think that is a question that may be safely left to the Legislature?

Mr. Carpenter, of Lewis & Clarke: The action of the Legislature in nine cases out of ten has been to imprison the witnesses.

Mr. Maginnis, of Lewis & Clarke: Then I second the motion of the gentleman from Lewis & Clarke (Mr. Toole) to strike the question out.

The President: The motion of the gentleman from Lewis & Clarke to strike out this section has been seconded, and is now before the house.

Mr. Burleigh, of Custer: This matter has already been left to the territorial legislature, and they have provided for the imprisonment of witnesses who were unable to give security, or who had not given security for their appearance before the court in these prosecutions. I do not think it is a safe repository for this power. I think it is one of the very fundamental principles that lies at the very foundation of the liberty of the citizen, and should be provided for in the constitution, and I think it should be placed beyond the reach and the power of the Legislature to check. Now, the idea, as I said the other day, of taking an innocent witness who is passing through the country here, who happens unfortunately to witness the commission of a crime, dragging him away perhaps from his family and throwing him into prison because he has not the means of giving security before the magistrate, seems to me to be as great a piece of barbarism as was ever practiced upon the early people of civilization by the inhabitants of the Barbary Coast. I, for one, cannot tolerate it.

Some gentlemen seem to go upon the hypothesis—the whole theory of the gentleman from Lewis & Clarke (Mr. Toole), is that the witness is the criminal, and that the defendant is the honest man. It seems to me that we should throw some safe-guard around here, and take it from the power of the Legislature to make any provision as they have done, by which an innocent witness is thrust into prison, and taken from his family, and kept there until the term of court. I, for one, cannot sanction it.

Mr. Knowles, of Silver Bow: I did not intend to say anything further upon this proposition, but the discussion has taken such a turn, and the amendments that have been made to it are of such a character, that I feel called upon to say a few words. Now, the amendment that is proposed by the gentleman from Lewis & Clarke (Mr. Carpenter) allows a deposition to be taken under provisions of law, after notice, in the absence of the defendant. Now, that will make a conflict with the preceding section, which says that the witness must be brought face to face. That is one objection to it. The next objection is that human experience has proven that it is best that a witness be confronted by the accused. Now, this is really for the preservation of the rights of the people. The state does not want to convict anybody who is innocent; the state has only one object in view in all prosecutions, and that is to convict guilty men, and it is found in all prosecutions that it is best that the witness should be confronted by the defendant. Now, the gentleman from Lewis & Clarke, who is near me (Mr. Toole), says that this must be carried all the way through, that he be not only confronted on the preliminary examination, but he must be confronted on the trial before the jury. Well, now, courts have held for a great many years that that was not necessary. In the very case in which the distinguished lawyer from Missouri made that celebrated speech—(interrupted).

Mr. J. K. Toole, of Lewis & Clarke: Will the gentleman allow me a moment. They held that was not necessary where the witness was dead, or had gone beyond the jurisdiction of the state.

Mr. Knowles, of Silver Bow: Well, this is not the proposition here either. It is to be taken under such rules and regulations as may be prescribed by the Legislature, and it is reasonable to suppose that the Legislature will not establish a rule in relation to criminal matters that it has not established in relation to civil matters. A deposition taken in civil matters can only be used where a party is beyond the jurisdiction of the court, or dead; if he is going away, you can take the deposition but you cannot read it; if the party is within the jurisdiction of the court, and can be brought there by process of the court you cannot read it. It is only to be taken and used in the absence of the witness where he cannot be produced, and it is reasonable to suppose that the Legislature will provide such a provision of law in relation to taking the depositions of these witnesses. Now, the gentleman (Mr. Toole, of Lewis & Clarke) wishes this matter so established and fixed that the witness must be present upon the trial. As he has admitted here, this is against former decisions of courts. Now, if those decisions, or the rule that has been established in these cases, has not produced hardship, is it reasonable to suppose that taking a deposition in the presence of the accused before a sworn officer will work this hardship? Is it reasonable to suppose that it will? Then, as to striking this matter all out and leaving it to the Legislature to determine, I would say that the taking of a deposition in a criminal case is derogatory to the principles of the common law, and unless you put it in this constitution, I doubt whether the Legislature would have any power to do that in a criminal case. The taking of a deposition, unless it is by some constitutional provision, I think, as a rule, is not allowed in the courts; and hence it was thought necessary to put this in the constitution for that purpose. Now, I have this to say, that if you leave it untrammelled to the Legislature, why, then you have got to strike out the other provision that the witness must be met face to face. Anyhow, I believe that those two sections will be construed together by any court in the world, and they will say this, that you have got to provide in taking your deposition a means for producing the defendant before the party who is to take that deposition, and before the witness. It is not necessary to go on here and provide all those means; you can leave it to the Legislature to provide them, so that the witness must be face to face with the accused; but do not fix us a whole code in relation to taking these depositions. That was the object of the Judiciary Committee in providing it Now, the gentlemen say about this thing of imprisoning men as witnesses, "Why, that is as old as our institutions; why do we take recognizances from witnesses and require them to give bond for security?" That is an old provision of the law, it is older than the government of the United States, and it was required of them just for that reason, that they may give this security to appear, so that the state may have the attendance of these witnesses. I believe the provision that is here is about the best that can be done. I would sooner say with the gentleman from Lewis & Clarke (Mr Tooke), strike the whole thing out than adopt the provision of the distinguished gentleman from Lewis & Clarke (Mr. Carpenter). I do not believe for one in taking the deposition of any witness, or having any witness testify against a criminal except face to face. I know of an instance that occurred right in this community in the days of the old Vigilance Committee. Mr. Langford, now of St Paul, was the chairman of that Committee. Men were brought in before that Committee that gave testimony before it of a crime committed by two parties and the Committee were almost unanimous that they ought to be punished after the manner of Vigilance Committees; but there were two or three friends of those parties there, and they finally prevailed after a great deal of discussion on bringing those two men before the Vigilance Committee. They were brought there and they were confronted. and they confronted the witnesses, and in fifteen minutes there were not found five men in that Vigilance Committee that were willing to vote for their conviction. The Chairman of that Committee, Mr. Langford, said that he had seen no rule of law more amply vindicated in his life than in the examination before that Vigilance Committee. This was the very thing that made the Star Chamber investigations of England so odious, that is to say, investigations without having the party confronted by the witness, and I believe there can be a means provided by the Legislature by which when a deposition is to be taken the criminal can be brought forward, and be made to confront the witness. He can be arrested for that purpose by a process of the court—re-arrested and brought there for that purpose. Some means can be provided rather than to have a man who simply happened to have eyes in his head and saw a criminal offense committed being incarcerated for months and months in one of our common jails.

Mr. Carpenter, of Lewis & Clarke: If the Convention will indulge me just one minute I wish to assume a case where, say, half a dozen witnesses are in jail for the purpose of appearing as witnesses for the prosecution. They cannot give the security required. On the other hand, here is the accused, under indictment, out on bail. It is impossible under our previous section to have that testimony taken unless he will consent. He refuses to consent. This provides a way to give him ample notice, and if he does not consent the testimony will be taken, because it will be his own fault if he does n[illegible] meet the witness face to face He has every opportunity given him to do it, and that is the only possible way to release an innocent witness from bondage.

Mr. Callaway, of Madison: The gentleman from Silver Bow, the last speaker except Governor Carpenter, is a distinguished jurist. I have sat in his courts and heard him instruct juries as to the law—that the jurors were the exclusive judges of the evidence, and of the credibility of the witnesses, and that in considering their testimony they should take into consideration upon the question of credibility the manner in which the witness testified, his bearing upon the witness stand as a matter from which they could gather from their opinion as to whether that man was worthy of belief. That has entered into the jurisprudence of this country as one of the most essential rights of the accused, that that man on the witness stand should be seen by the jury, that they could take and look him over, understand his manner, look in his eyes; see his hesitation, and see whether he is telling the truth or not; whether he be honest or dishonest, and if there be anything essential in the defense of a man it is that very proposition. Allow me to ask the gentlemen of this Convention what they suppose would have been the result of the Parnell trial had not the perjurer met the court that tried that case face to face. I know, Mr. President, from nearly thirty-four years' experience at the bar that in many cases where you bring a witness before a Commission, a justice of the peace, to be examined, he may tell a smooth story, and when the testimony goes before the trial jury they have the matter in cold black and white. They cannot estimate the value that that man's testimony should have. He can lie as smooth as a liar can lie, and they will not know but what it is gospel truth; and I tell you, sir, that I agree with the gentleman from Lewis & Clarke, Mr. Toole, that this is one of the most dangerous innovations that has ever been attempted in any fundamental law of the land. Because a man is accused, Mr. President, of a crime, it does not follow that he is guilty. Men have been incarcerated, they have gone to the gallows, they have gone to the guillotine upon false testimony offered. I know in the Territory of Montana innocent men have been accused of crime, indicted and convicted. This is one of the most sacred rights that belong to the American citizen; and therefore I shall heartily second the motion to strike this whole provision out. You may say, gentlemen, that when you put this provision upon the statutes of the Territory of Montana that an innocent may may be imprisoned, a witness who happened to see some crime committed, because he was so situated that he could not shut his eyes and stop up his ears, and could not give bail for his appearance that it is a wise provision. I think it one of the most outrageous and abominable restrictions upon the right of American citizens. No Legislature of the State of Montana can, with due regard to the Bill of Rights of the Constitution of the United States, put a man in prison and keep him there to be used as a witness, and I guarantee that if this case had ever come up on habeas corpus before a competent judge of the Territory of Montana, he would have said, release this man because it is unconstitutional. I do not know of any case of the kind, but I do not know of a statute in the United States that is in force except in Montana, that allows any such outrage upon the rights of a citizen. I am opposed to any provision of the kind of any character whatsoever, and therefore I shall vote with the gentleman from Silver Bow to strike the whole thing out. I oppose the motion of the gentleman from Lewis & Clarke, Major Maginnis, for the reason that his amendment would simply give authority to the Legislature to commit this crime upon liberty.

Mr. Stapleton, of Silver Bow: We have heard a great deal about the rights of defendants, and about the rights of prisoners. Now, it appears to me, Mr. President, that the people have some rights as well as the criminal, and what we want to do is to so adjust our laws and constitution as to guarantee all the rights possible, both to the defendant and to the people. It will be admitted by everybody that there have always been too many loopholes by which many charged with crime, and guilty of crime, too, may escape punishment. Now, I do not understand what my friend, Mr. Toole, proposes to do in regard to this matter. He has addressed the Convention here in regard to what Mr. Wright of Missouri said in regard to this proposition, but it was only a few days after that that the Supreme Court of the State of Missouri decided that Mr. Wright was wrong. (Laughter) Now, Mr. President, they have decided there that when a man is met face to face with the evidence that is against him, when he is met once that is sufficient. It is not necessary that you should follow him around with the witness on every occasion. When he is present at the time that witness is giving his testimony, and with his counsel has an opportunity to cross-examine, that is all, it seems to me, that the most strenuous advocate of the rights of the prisoner should claim. When the trial comes off if that witness is within the jurisdiction of the court, then that evidence is not to be used at all but the witness himself is to go before the jury. But this is only a precautionary measure when the witness cannot be procured at the trial. Now, Mr. President, it is claimed that it is an outrage worse than barbarism to imprison a witness. It does look very hard to imprison a man for that, and be put to as much inconvenience and trouble as the man who has committed the crime. Now, you take the proposition of Mr Toole, that a deposition shall in no case be taken; take the other proposition that the witness shall in no case be imprisoned and held as a witness; why, it necessarily results you have got no witness when the day of trial comes, and the result is that the man who has committed a cold-blooded murder, or any other crime that was witnessed by half a dozen people cannot be convicted because they are all gone and there is nobody to fix the murder at all, and consequently the accused walks into court with perfect impunity. Now, Mr. President, you have got to do one of two things. The peope demand that they shall be protected, and the only way to do that is to bring this man to trial in some way, and before you can punish him you have got to have witnesses in some way. Now, if you decide it is morally wrong, legally wrong to imprison a man who cannot give a bond for his appearance, and then if you decide that a deposition cannot be taken, why, you just provide a highway by which everybody accused of crime can march off with perfect impunity, and there is no protection for the people at all. I am decidedly against striking out this clause in the constitution, and am in favor of Governor Carpenter's amendment, so that the prosecuting attorney, or anyone who has charge of the matter, can go and notify the defendant and his counsel that the deposition of the witness will be taken at a certain time and at a certain place, the same as you do in a civil case. Then, you have given him an opportunity, and that is all that anybody should ask. If they do not desire to be present when that evidence is taken, then the people cannot help it, the prosecution cannot help it But when they have got notice and the prosecution goes before a notary public, or magistrate, or some person authorized to take oaths, and take that deposition, it is one hundred to one that the defendant will be there. He will want to know what that man is going to testify to, but if he is rebellious and stubborn and will not go there, then go and take the deposition anyhow. That is the only way to get the evidence, and I say go on and take the deposition, and when the day of trial comes, if that witness is beyond the jurisdiction and the control of the court, then that evidence can be read before the jury, but if the witness is within the jurisdiction of the court then it is not right it should be read. Of course, it is always better that the jury should judge of the bearing of the witness, but in the absence of that, you are going to say that the defendant shall go scot free. I say no, the people have some rights. This is the people against the defendant, and it is the people trying to protect themselves against the criminal classes. and instead of putting in our time here providing a highway by which the criminal classes should escape, I say that all we should do is to give them a speedy and impartial trial.

Mr. Burleigh, of Custer I demand the previous question.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Burleigh), and a vote being taken, the same was declared carried.

The President: The question before the Convention is upon the motion of the gentleman from Lewis & Clarke, to strike out section 17.

Mr. J. K. Toole, of Lewis & Clarke: Permit me to make an inquiry. I think the President insists upon putting the motion wrong. The motion is to strike it out. Now, if there should be a tie vote on the proposition the way the Chair puts it, the motion that it stand would be lost, and if the other way on the motion to strike out, it would be lost.

The President: I would say to the gentleman it is customary to put the motion that way. It is parliamentary form. If it is the wish of the Convention to put it the other way, the Chair will so put it.

Mr. J. K. Toole of Lewis & Clarke· I would prefer to have it put that way.

The President: If there be no objection as many as are in favor of striking it out say Aye.

The Chair announced the motion to strike out as lost.

The President: The question is now upon the motion of the gentleman from Lewis & Clarke which will now be read.

The Clerk read the amendment of Mr. Carpenter of Lewis & Clarke as follows: "Or without their presence if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence upon the trial if the witness shall be dead or absent from the territory."

Mr. Collins of Cascade: I move it be adopted.

The motion was seconded.

The Chair stated the motion.

Mr. Rickards of Silver Bow: I may be in error, but is not that last word a strange phraseology? Are we adopting a Constitution for the territory?

Mr. Carpenter of Lewis & Clarke: I beg to apologize. It should be "state."

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, (Mr. Carpenter,) and a division being called for, the same was declared carried, by a vote of 45 in the affirmative to 13 in the negative.

Mr. Burleigh of Custer: I now move the adoption of section 17 as amended.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer, (Mr. Burleigh) and a vote being taken, the same was declared carried.

The President: The ayes and nays should be entered upon this proposition.

Mr. Burleigh of Custer: I call for the ayes and nays upon the adoption of this section, in order that they may be entered in the journal.

Mr. Courtney of Silver Bow: Mr. President, I would like to ask whether it would not be sufficient to take the ayes and nays upon the adoption of the entire proposition after we have gone along this way, and made the necessary amendments.

The President: I would say to the gentleman from Silver Bow that it has been the custom heretofore to simply pass these sections, and make no motion to adopt them until the final section is reached and then the motion to adopt includes the whole file.

Mr. Collins of Cascade: Mr. President, I do not understand the gentleman from Custer. Does he wish the ayes and nays upon this particular section?

Mr Burleigh of Custer: Oh, no, sir.

The Clerk read section 18 as follows: Section 18. That no person shall be compelled to testify against himself in a criminal case, nor shall any person be twice put in jeopardy for the same offense. If the jury disagree or if the judgment be arrested after verdict, or if the verdict be arrested for error of law, or if any juror, or the judge of the court shall, from sickness or other cause, become unable to act after the empanelling of the jury, the accused shall not be deemed to have been in jeopardy.

Mr. Carpenter of Lewis & Clarke: In line 5, fourth page, I would move to insert after the word "jury" the following, "the jury may be discharged and," There is no provision with reference to discharging the jury.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, (Mr. Carpenter,) and a vote being taken the same was declared carried.

Mr. Dixon of Silver Bow: Mr. President I desire to offer an amendment.

The amendment was sent to the Clerk's desk.

The President: The gentleman from Silver Bow, (Mr. Dixon,) offers to amend section 18 by striking out the words, "arrested for error of law,' in line 3, page 4, and insert instead, "set aside, or if a new trial be granted or if the judgment be reversed on appeal."

The Motion was seconded.

Mr. Robinson of Deer Lodge: Mr. President I move to amend that by striking out the word, "verdict," and insert the word "judgment" in lieu thereof, for the purpose of making it harmonious with the amendment of the gentleman from Silver Bow.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Deer Lodge, (Mr. Robinson), and a vote being taken the same was declared lost.

The President: The question now recurs upon the amendment offered by the gentleman from Silver Bow, (Mr. Dixon.)

The Chair put the question on the said motion of the gentleman from Silver Bow, and the same was declared carried.

The Clerk then read the section as amended, as follows: "Section 18 That no person shall be compelled to testify against himself in a criminal case, nor shall any person be twiee put in jeopardy for the same offense. If the jury disagree or if the judgment be arrested after verdict, or if the verdict be set aside or if a new trial be granted, or if the judgment be reversed on appeal, or if any juror, or the judge of the court shall, from sickness or other cause become unable to act after the empanelling of the jury, the jury may be discharged, and the accused shall not be deemed to have been in jeopardy."

Mr. Carpenter of Lewis & Clarke: Mr. President, I think the language ought to be changed. It reads, "the jury **may** be discharged." I think to make it grammatical and consecutive, it should read, "and the jury **shall** be discharged."

The President: If there be no objection, the Clerk will enter "shall" instead of "may".

Mr. Callaway of Madison I now renew the motion of the gentleman from Deer Lodge, that the word "verdict" the second time it appears in line 3, page 4, be made "judgment." If the gentleman of the Convention will turn back they will read, "If the jury disagree, or if the judgment be arrested after verdict, or if the verdict be arrested for error of law." It is a mistake somehow; It is intended to be "judgment." No one ever heard of a verdict being arrested.

The President. The Chair would suggest to the gentleman from Madison that that question has been disposed of.

Mr. Middleton of Custer I would suggest to the gentleman from Madison that it does not read that way now as amended. It reads, "If the verdict be set aside." the word "arrested" was stricken out.

Mr. Knowles of Silver Bow Before we vote upon this provision, as now amended, I would like to call the attention of the Convention to the fact that I believe this is a greater innovation than you have yet undertaken. There is a provision there, as I understand it, that if the judgment is reversed, etc. Now, that language there does not confine it on appeal of the defendant but if it is reversed on appeal on the part of the state, why then the party is not in jeopardy. Now, the whole doctrine of jeopardy is gone in that case, because the State can take an appeal, and if the judgment is reversed, try the man over again.

The President Does the gentleman desire to offer an amendment?

Mr. Knowles of Silver Bow: No, I desire to vote against that provision.

Mr. Marshall of Missoula· Mr. President, it seems to me, that the same object that the gentleman from Silver Bow has upon appeal would operate upon a new trial. Where there has been a trial and a verdict, you cannot put the defendant in jeopardy again, whether by appeal or on motion of the court. It seems to me, that if that is what this section means, that is violative of the very first principle that a man shall not be twice put in jeopardy for the same offense, not only on appeal, but on a new trial. If it is confined to the motion of the defendant, that it shall rest on appeal, or judgment arrested, or a new trial granted on this motion, it is perfectly right, but it seems to me, that it is intended to apply to any appeal, to give the Commonwealth the right to appeal or a new trial, or to move the arrest of judgment or anything else. That is putting a man twice in jeopardy for his own life, and is the very thing we are endeavoring to guard against.

The President: The Chair would state there is nothing pending before the Convention.

Mr. Hartman of Gallatin. I desire to move you to strike out all of section 18, after the word "offense" on the second line of said section, at the bottom of page 3.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Gallatin, (Mr. Hartman,) and a vote being taken the same was declared carried.

The President We will now pass on to the consideration of section 19.

The Clerk read section 19 as follows: Section 19. That all persons shall be bailable by sufficient sureties, except for capital offenses when the proof is evidence or the presumption great.

There being no amendments to section 19, the Clerk read Section 20 as follows Section 20. That excessive bail shall not be required, for excessive fines imposed, nor cruel or unusual punishments inflicted.

There being no amendments to Section 20, the Clerk read Section 21, as follows: Section 21. That the privilege of the writ of habeas corpus shall never be suspended, unless in case of rebellion or invasion, the public safety require it.

There being no amendments to Section 21, the Clerk read Section 22, as follows: Section 22. That the military shall always be in strict subordination to the civil power; that no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

There being no amendments to Section 22, the Clerk read Section 23 as follows: Section 23. The right of trial by jury shall be secured to all, and remain inviolate, but in all civil cases and in all criminal cases not amounting to felony, upon default of appearance or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived. or a trial had by any less number of jurors than the number provided by law. A jury in justice's courts, both in civil cases and in cases of criminal misdemeanor, shall not consist of more than six persons. In all civil actions two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all of such jury concurred therein.

Mr. Craven, of Lewis & Clarke: I move to amend.

The President: The gentleman from Lewis & Clarke offers an amendment. Strike out in line six the words, "two-thirds in number," and insert in lieu thereof the words, "in number not less than three-fourths."

The motion was seconded.

The Chair stated the motion.

Mr. Hartman of Gallatin: Mr. President, I desire to move an amendment to the amendment by striking out all of section 23, after the word "persons" in line six of said section; in other words, the entire last sentence, "In all civil actions," etc.

The motion was seconded.

The Chair stated the motion.

Mr. Middleton of Custer: Mr. President, I hope this motion will not prevail. I believe I am somewhat in favor of the amendment proposing that nine may bring in a verdict not less than nine; but to say that the old rule. that the verdict must be unanimous, I do not believe it is the sense of this Convention that that should be done, or that that should be a provision of the Constitution. The gentleman who has made the motion to strike out, from his experience as a lawyer, knows undoubtedly that it many times happens in damage suits, and in various kinds of civil actions that it is possible for a party to the action to succeed in getting one or two friends on the jury that perhaps will go so far almost as not to intentionally disregard their oath, but lean so much to their friends as to be perhaps unconsciously, biased in his favor. Now, in the usual and ordinary matters of life, business, politics, and everything else, a majority rules. I would not be in favor of making it a bare majority in a jury trial, but I do believe that three-fourths of the jury should be sufficient in any civil action. It may be possible for a party to get one or two, or perhaps three men on the jury who may be to some extent biased in his favor, but to get more than that would seem perhaps improbable; and I believe that in a majority of cases, a verdict by nine would be more satisfactory than a disagreement and the retrial of the case. I have in my mind a case that I tried twice. The first time it was tried the jury were out some thirty six hours, and finally were discharged by the court, and stood ten to two. The case was retried at the next term of the court, and the jury stood, when they were discharged, nine to three, the majority of the jury being in both instances the one way. Now, I assert right here, that, in my judgment, on each one of those juries, there were two or three men who were not fit persons to sit upon the trial of that cause; and that the party made his brags that he had one or two men on that jury that never would bring in a verdict against him. I believe that a verdict of nine men should be sufficient.

Mr. Maginnis of Lewis & Clarke: I ask that the Chief Clerk read to the Convention the opinion of Judge Deidy, the United States District Judge of Oregon, the oldest and most distinguished jurist on this coast.

The Clerk read as follows: Provided that a majority of a jury may find a verdict in all cases. or at least do not tie the hands of the Legislature so that it cannot be done hereafter. This is a very important matter. The constitution of the jury must be reformed in this particular if this institution is not to become an impediment to the administration of justice. All those who thrive by the defense of criminals, and consider a hung jury, even if by one to eleven, the next thing to an acquittal, will be found opposing this reform. It could have no better commendation to the people at large, as I once wrote in an essay upon the subject, published in the American Law Review, Volumne 17, page 403. This is emphatically an age of individual opinion and judgment, whether it is better or worse on that account, it is now not material to inquire, but in the consideration of this question the fact ought not to be ignored. With the exception, of juries it is a fundamental law of our institutions, and the unwritten law of society, that when any matter is submitted to the verdict or judgment of any number of persons, the action or opinion of the majority shall prevail. It applies to Congress and to courts, and there is no longer any good reason why the verdict of a jury should not conform to it also."

Mr. Maginnis of Lewis & Clarke: Mr. President this is the advice given to the Constitutional Convention of our sister Territory of Washington by the oldest and most distinguished United States District Judge in this part of the country, known, I presume, to every lawyer here, and I hope it will have weight with the Convention that the very moderate reform that our Committee has recommended will be sustained.

The President: The Chair desires to state that the motion offered by the gentleman from Lewis & Clarke to amend will, according to the rules properly come first before the Convention. According to this rule, the Chair will entertain the motion of the gentleman from Lewis & Clarke, to amend the latter part of the section, before the question to strike out, and that is now the question before the Convention.

Mr. Goddard of Yellowstone. Do I understand now the motion before the House is on the amendment of the gentleman from Lewis & Clarke?

The President· The Chair so stated.

Mr. Goddard of Yellowstone: There is serious objection that may be urged against the motion of the gentleman, and that is that it might necessitate the dividing up of one of the jurors in order to arrive at a verdict. As I understand, the amendment provides that three-fourths of the jury may find a verdict.

The President: Any number not less than three-fourths;

Mr. Goddard of Yellowstone: Yes, sir. Now, if a jury of nine were agreed upon, it would be hard to determine as I say, without cutting a juror in two; or if the number of five were agreed upon, or even six, and the same objection might be urged to the other proposition as to a two-thirds majority. Where it provides that a jury of a less number shall be agreed upon to try the case, if they should agree upon five or seven, it would be a hard matter then to arrive at the verdict. So far as the proposition is concerned as to the majority of the jury finding a verdict, I am in accord with that. The reasons have been well stated by other gentlemen who have preceded me, and better stated by the article read by the clerk, from the pen of Judge Deidy. There are numerous instances occurring every day in the courts of this territory and everywhere else, for that matter where great injustice is done to one or the other of the litigants. As has been said, it may be that a juror gets upon the jury who is biased or prejudiced in favor of one of the parties in a civil action, and he goes there with the prejudice in his mind, and perhaps, contrary to his oath, for that matter, and he would hang the jury and would lose it before he would give in. So, in a case of that kind a great injustice would be done. Not only that, but in minor offenses against the law of the territory, in misdemeanors the same rule would apply there. I am most decidedly in favor of a majority of the jury finding a verdict in all civil cases, and in cases of misdemeanor but I am not in favor of the motion of the gentleman from Lewis & Clarke as to three-fourths, or the other proposition of two-thirds.

The Chair then put the question on the said motion of the gentleman from Lewis & Clerke, (Mr. Craven,) and a vote being taken, the same was declared lost.

The President. The question now recurs upon the amendment offered by the gentleman from Gallatin to strike out all that portion of the section after "persons" in line six, as the Chair understands it.

The Chair then put the question on the said motion of the gentleman from Gallatin, (Mr. Hartman,) and a vote being taken the same was declared lost.

Mr. Robinson of Deer Lodge: I move to amend the section by striking out the word "civil" where it occurs in the last line but one—line 6—so that it will read "In all actions."

The motion was seconded.

Mr. Hartman of Gallatin: Mr. Chairman it seems to me, that the effect of that amendment should be well considered before this Convention votes upon it. The effect of that amendment is to say that every criminal prosecution in this country, no matter what it may be, even for the very highest offense known to the law, that of murder, or treason, shall be tried, and the party may be convicted by a verdict of two-thirds of the jury. Now, I was not particular about the motion which I made to strike out the clause which provides that two-thirds shall find a verdict in a civil action and I must confess this, that I am somewhat wedded to old institutions when it comes to the question of enacting a fundamental law, and it does seem to me that we are introducing an innovation here upon which the rights and liberties of the citizens of this community depend; and that this step is too far in advance. Every case of murder, every case of arson, every case of treason which occurs in the State of Montana, if this amendment prevails, will be tried by a jury two-thirds of whom may find a conviction. Now I frankly admit this, that the jury system which has been in vogue in the United States ever since its existence is not a perfect system, and I pretend to say, that no human system will be perfect. There are none but what will present their defects to us. But, gentlemen of the Convention when we are striving in advance, let us remember this, that the entire experience of this Nation during its entire existence has been in support of a jury system in which twelve men have concurred in all cases of felonies that are tried in the United States. Now it seems to me, that this is too much of a step in advance, and that if you must allow two-thirds of the jury to find a verdict, let it be at least in case of misdemeanor, if it is to be in criminal cases at all. I think the gentlemen will make a mistake if we permit the institution of a jury twelve of whom have been heretofore necessary to concur in a verdict, to be reduced to two-thirds. It is imperilling the liberties of the people.

The President: The question is upon the amendment offered by the gentleman from Deer Lodge, (Mr. Robinson,) to strike out the word "civil."

Mr. Robinson of Deer Lodge: I am in favor of all radical reforms, but when such excellent authority as Judge Deidy advances a proposition of this kind, he stands as a disinterested party; it is well enough to stop to consider it, and if majorities rule in every transaction in life why not in these matter. If two-thirds of a jury can find a verdict in a civil case, I can really see no impropriety in providing the same thing in criminal cases. The reasons assigned for a two-thirds or three-fourths verdict in a civil case, apply with still greater force in criminal cases, because if there is any temptation in any character of action to tamper with the jury, to get men on the jury who will not be governed by their oaths, and the law and the evidence in the case it is in cases of felony. The temptation in such cases is so great that if men can be obtained upon that jury by hook or crook to accept the defendant by means foul or fair, the temptation is so much greater that it is more likely to occur. For reasons of that character, the reasons for the change from a unanimous verdict to a two-thirds or three-fourths one are still greater increased. I am not raidcal upon these propositions but I desire the Convention to think the matter over a little before they pass on it one way or the other. It is worthy of consideration and not to be voted down hastily, but upon consideration and I say the reasons for it apply in criminal cases with greater force, if anything, than in civil cases. Now, so far, Mr. President, as men being convicted of crime who are innocent, that will rarely, if ever, occur. Under the instructions and admonitions of courts that jurors must be convinced of every proposition necessary to constitute the guilt of a defendant before they can find him guilty, and with the natural reluctance, sir, that jurors have to convicting innocent men, they always hesitate, they study, they go slow upon these propositions; they consider about it. And I have yet to meet an instance where a man has been convicted wrongfully, Besides that, Judges sitting upon the Bench, if they see that the testimony will not warrant a conviction, they are made of flesh and blood like jurors, and like every one else. They will never allow an innocent man to be punished. Such has been my observation, that there has been no danger of the innocent suffering the penalties of the law Then, sir, those who advocate the very strictest enforcement of every right in behalf of the defendant, to the very extremes, while it may be good—while it may be a fine thing in theory, yet we want sir to protect the innocent as to punish the guilty That, sir, is the object of every criminal code—to serve those two purposes, to protect the innocent as well as to punish the guilty. Now, sir, let us see what we are drifting into if we weigh down our criminal code and the defendants with a weight of technicalities by which it becomes next to impossible to secure a conviction of the defendant Such a theory of criminal law is well suited to the ideal of men who devote their exclusive time in defending criminals, but what will be the effect of that. The effect of that would be, that it would be next to impossible to secure the conviction of a defendant where the conviction could be held down and the punishment secured. What then, would be the result of these homicides in felony cases? The result of that would be that there would be more men wrongfully condemned to death and suffer the penalties than would be under a liberal and fair character of criminal code. Why, some statistician has seen fit to take the year 1884 as an average year as to homicides; and upon examination finds that in that year 1,262 homicides had been committed in the United States. Of that number, 93 of them has been punished by the courts, 112 of them had been hanged by Vigilance Committees. Gentlemen may say it is wrong for Vigilance Committees to hang them, but nevertheless, they will do it, and there are no degrees in the verdicts of such tribunals as that. Their verdict is almost invariably murder in the first degree Then, it is fair to presume sir, of that 112 that were executed at the hands of that character of tribunal, at least two-thirds of them were of such character of cases as no impartial jury or any lawyer, or judge of the court would say that they should have been convicted of murder in the first degree, but it would have been second degree or manslaughter and some of them under fair construction would have been entitled to an acquittal, yet, at the same time there were at least two-thirds of those 112 men who were executed because of the laxity in the administration of our criminal code Now, then, in answer to those who have talked of the imaginary protection of defendants here, with fine sounding periods. Let us pause a little and see the effect of it. It is but human nature that wherever the laws are so constructed as to defy the conviction of criminals by the court, the people will not long be outraged in that way, but they will, whether it is right or wrong. take the law in their own hands. It is not a question for the man who is being dragged to the limb of a tree to be hung by a Vigilance Committee, or a mob. It is no consolation to him to know that their proceedings are wrong; it is no consolation to his friends, to his wife, his children, and his relatives, to think over the matter after the deed has been done; to think that the proceedings are all wrong That does not alleviate the pain and mortification; it does not relieve the public of the odium of it. and I say, sir, if we would protect the lives of innocent men, which is one of the objects of criminal law, it must be so constructed that we must have an even and reasonable chance of punishing the guilty. It is the only way we can shield the innocent Then, I say, let us pause in constructing a criminal code; let us pause and see that we have given the people an even chance with the defendant if we would protect the innocent; and I say, then, that this proposition to convict the defendant with less than the unanimous verdict of a jury does not present the monstrosity and the dangerous thing to the life and liberty of the prisoner that may be imagined, and on the whole, sir, I believe I am inclined to support the proposition.

The Chair put the question on the motion of the gentleman from Deer Lodge, (Mr. Robinson), and a division being called for, the same was declared lost by a vote of 14 in the affirmative to 45 in the negative.

Mr. Collins, of Cascade: I offer the following amendment. In all civil actions, and in all criminal actions not amounting to felony two-thirds in number of the jury may render a verdict, and such verdict, etc. Add the words, "and in all criminal cases not amounting to felony."

The motion was seconded

The Chair put the question on the said motion of the gentleman from Cascade, (Mr. Collins,) and a division being called for, the same was declared carried, by a vote of 32 in the affirmative to 22 in the negative.

Mr. Hogan of Silver Bow: For information, I would like to ascertain how it reads as amended.

The Clerk read the section as amended.

The President: If there be no further amendments to section 23, the clerk will read Sec. 24.

The Clerk read section 24 as follows: Section 24. Laws for the punishment of crime shall be founded on the principles of reformation and prevention and not of vindictive justice.

Mr. Carpenter of Lewis & Clarke: Mr. President, I move to strike out the five last words of that section, "and not of vindictive justice." I am in favor of the first part of it, but justice is never vindictive. The word "vindictive" implies malice or revenge.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, (Mr. Carpenter,) to strike out the words, "and not of vindictive justice," and a vote being taken, the same was declared carried.

Mr. Burleigh of Custer: I move to strike out the whole section.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer, (Mr. Burleigh,) to strike out section 24, and a vote being taken, the same was declared lost.

Mr. Dixon of Silver Bow: I desire to offer an amendment.

The President: The gentleman from Silver Bow, Mr. Dixon, offers an amendment. At the end of section two add the following, "But this shall not affect the power of the legislative Assembly to provide for the punishment of offenses by death."

The motion was seconded.

The Chair put the question on the said amendment of the gentleman from Silver Bow, Mr. Dixon, and a vote being taken, the same was declared carried.

There being no further amendments to section 24, the Clerk read section 25 as follows: Section 25. Persons of Foreign birth or residence shall have the same right as native born citizens to acquire, purchase, possess, enjoy, convey, transmit and inherit mines and mining property, and milling, reduction, concentrating and other works and real property necessary for, or connected with the business of mining and treating ores and minerals. Provided that nothing herein contained shall be construed to infringe the authority of the United States to provide for the sale or disposition of its mineral and other public lands.

Mr. Conrad of Choteau sent up an amendment.

Mr. Whitehill of Deer Lodge sent up an amendment.

The President: The gentleman from Deer Lodge, Mr. Whitehill, offers an amendment to section 25, as follows: "Aliens who are, or who may hereafter become bona fide residents of this State may acquire, inherit, possess, enjoy and dispose of property, real and personal, as native born citizens.

The motion was seconded.

The Chair stated the motion.

Mr. J. K. Toole of Deer Lodge: I hope this amendment will not prevail. I think if it should do so it would defeat the purposes for which this section is inserted. The object, as I understand is, and one of the great objects to be secured by admission to Statehood will be this privilege, that is, the privilege of disposing of mining property to non-residents of this country. It is a well known fact that we have engaged in this business already considerable foreign capital, and more will be invested when it is known that the restrictions that now hedge these investments are removed by the admission of the State into the Union. and the experience of every mining man will bear me out in the assertion that it is a great benefit to the country, particularly to the State of Montana and adjoining States here. Therefore, some such clause as was reported by the Committee permitting the investment of foreign capital, regardless of where the investors may reside or whether they are citizens or not of this country, should be adopted. My observation has led me to the conclusion, that where there has been a dollar taken out of Montana Territory before the Act of Congress prohibiting the investment of foreign capital, there have been four or five dollars invested here, and we would certainly be very foolish to prohibit anything advantageous to the people of the Territory in that measure. For that reason, I am opposed to the adoption of the amendment, and hope it will not prevail. I know it will not suit the mining people of this Territory.

Mr. Whitehill of Deer Lodge: I think that is an innovation on the Constitution, the making of which we are hardly prepared to adopt. There is not another State in the Union that has such a provision, with the exception of one or two. This is copied exactly from the Constitution of the State of Colorado, and it is the most liberal constitution in that respect of any of the States of the Union. Now, gentlemen, here we go in this section, and allow persons of foreign birth or residence the same rights that citizens of the United States possess. Why, natural born citizens, who have come here and declared their intentions have hardly the same privileges as we are giving now to persons in Europe. There is no objection to foreign capital being invested here. But if we allow such a provision as this to be entered here, why the whole capital of Europe may be invested in our lands, or in our mining property here and be owned by them. Foreign capital is invested in corporations here as the laws are now. These stock companies are formed, and there is no prohibition whatever in regard to the investment of foreign capital. Corporations, can be formed as they are in Nevada under corporation laws. The general corporation is formed in Europe and the capital is invested there, and then for the purpose of investing it here, a corporation composed of citizens of the United States is formed, and the capital is re-invested here. And I think it is eminently proper that persons of foreign birth who are not aliens, who have come here to become bona fide residents of Montana if they desire to invest their money here, should be protected; that they should be protected when thy come here to reside with us and to invest their property and means. Now, a man going from this country to Europe would have no such privileges as are here given, and so I say it is an innovation, which I do not think the people of Montana are prepared to sanction, because it does not give, as a gentleman has asserted, any additional rights to persons to invest foreign capital here than what there are now.

The President: The question is upon the Substitute offered by the gentleman from Deer Lodge, (Mr. Whitehill.)

The Clerk read said Substitute as follows: Substitute for Section 25. Aliens who are, or who may hereafter become bona fide residents of this state, may acquire, inherit, possess, enjoy and dispose of property, real and personal, as native born citizens.

The Chair put the question on the said motion of the gentleman from Deer Lodge, (Mr. Whitehill,) and a vote being taken, the same was declared lost.

Mr Conrad of Choteau sent up an amendment.

The President: The gentleman from Choteau moves to amend Section 25 as follows: Strike out all of second line after "inherit," all of line three and that portion of line four commencing, and ending with the word "minerals" and insert in lieu thereof, "real and personal property."

Motion seconded.

The Chair stated the motion.

Mr. Ramsdell of Missoula: It seems to me we are making a departure here that is not warranted by experience. Although I am in favor of the section that has just been adopted, that will give foreigners the right to develop mining properties. I am opposed to any provision that will provide that foreign corporations may invest in real and personal property outside of that. I do not think that it is for the interest of our State. and in fact none of the States of this Union, so far as I am able to understand contemplated anything of that kind. This would place our lands at the disposal of foreign corporations; it would place our real estate here at the disposal of foreign corporations; and in fact, before we would really understand the situation we would have a condition of things here in which our own people would be vieing with foreign corporations for supremacy. We would have our lands under the influence and control of foreign corporations, and we have fair samples of the greed with which foreign corporations are trying to create investments of this character to day. Throughout the Southern States and Texas, where the laws allow them to buy up large tracts of land at their discretion, they have taken advantage of those laws, and there are large tracts of land owned and controlled by foreign corporations to-day upon which there are herds of cattle raised. They are not citizens of this country, and it seems to me, that this departure is not warranted, and the people of our country would be opposed to it.

Mr. Conrad of Choteau: My idea in offering that amendment to section 25 was for the purpose that in case a railroad composed of foreign capital wished to build into the territory, that they could acquire a roadbed. That was the only reason I had for striking out. I do not see why we should not allow foreigners to acquire other property outside of mines.

Mr. Maginnis of Lewis & Clarke: A railroad company would have to organize under our laws to have a right of way, anyway.

The Chairman put the question on the amendment of the gentleman from Choteau, (Mr. Conrad,) and a vote being taken, the same was declared lost.

Mr. Dixon of Silver Bow: I desire to offer an amendment to that section.

The President: The gentleman from Silver Bow offers a motion to amend Section 25, by striking out the words, "persons of foreign birth or residence" in line one and inserting instead the word "aliens."

The motion was seconded.

Mr. Maginnis of Lewis & Clarke: Why not go farther, and strike out the word "native born," because an adopted or naturalized citizen has the same right as a citizen; so that it would read, "aliens shall have the same right as citizens."

Mr. Dixon of Silver Bow: I accept that amendment

The Chair put the question on the amendment of the gentleman from Silver Bow, Mr. Dixon, and a vote being taken, the same was declared carried.

There being no further amendments to Section 25, the Clerk read section 26 as folows: Section 26. That the people have the right peaceably to assemble for the common good, and to apply to those invested with the powers of government for the redress of grievances by petition or remonstrance.

Mr. Conrad of Choteau: I would like to be excused for the remainder of the afternoon.

The President: If there be no objection, the gentleman from Choteau will be excused for the remainder of the afternoon.

There being no amendments to Section 26, the Clerk read section 27 as follows: Section 27. That no person shall be deprived of life, liberty or property without due process of law.

There being no amendment to Section 27, the Clerk read Section 28 as follows: Section 28. That there shall never be in this State either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

There being no amendment to Section 28, the Clerk read Section 29 as follows: Section 29. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

There being no amendment to Section 29, the Clerk read Section 30 as follows: Section 30. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

There being no amendment to Section 30, the Clerk read Section 31 as follows: Section 31. No armed person or persons or armed body of men shall be brought into this State for the preservation of the peace or the suppression of domestic violence except upon the application of the Legislative Assembly, or of the Governor when the Legislative Assembly cannot be convened.

Mr. Maginnis of Lewis & Clarke: I move the adoption of Proposition No. 1, and on that I call the previous question.

The motion was seconded.

The President: The Clerk will call the roll, and the ayes and nays will be entered on the journal.

The Clerk called the roll, and the vote stood as follows: Ayes. Aiken, Bickford, Brazelton, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, Edward; Burns, A. J.; Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Cooper, Courtney, Craven, Conrad, Dixon, Durfee, Dyer, Eaton, Fields, Gaylord, Gibson, Gillette, Goddard, Graves, Hartman, Haskell, Hatch, Hobson, Hogan, Joy, Joyes, Kanouse, Kennedy, Knippenberg, Knowles, Loud, Maginnis, Marrion, Marshall, Mayger, McAdow, Middleton, Mitchell, Meyers, Parberry, Ramsdell, Reek, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, J. K.; Toole, J. R.; Warren, Watson, Whitehill, Witter, Mr. President—66 Nays. Robinson.—1. Absent. Conrad, Hammond, Hershfield, Hickman, Kohrs, Luce, Muth, Webster,—8.

The President: There are on the adoption of Proposition No. 1, 66 votes in the affirmative, and 1 vote in the negative. The motion is carried, and File No. 1 will now be referred to the Engrossing Committee, to be properly engrossed, and referred to the Committee on Revision and Phraseology.

Mr. Burleigh of Custer: I move that the Convention take a recess until eight o'clock this evening.

The motion was seconded.

Mr. Collins of Cascade· Mr. President, I move we adjourn. I will state that a number of Committees want to be in session this evening, and it will expedite the work of the Convention.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Cascade, (Mr. Collins,) and a vote being taken, the same was declared carried.

The Convention stood adjourned until Wednesday, July 24th, 1889.

SIXTEENTH DAY

Wednesday, July 24th, 1889,

Morning Session

The Convention was called to order at ten A. M. by the President.

The Clerk called the roll.

The President. The gentleman from Jefferson, Mr. Bullard, was called away professionally, and desires to be excused.

Mr. Buford of Madison· I ask that Judge Luce be excused, as he is still indisposed.

The President: If there be no objection, these gentlemen will be excused.

The Chaplain offered prayer.

The Clerk read the journal of the previous day.

Mr. Durfee of Deer Lodge sent up petition.

The President· The Petition of Citizens of Deer Lodge County relative to Sunday Law will now be read.

The Clerk read as follows: Petition of Citizens of Deer Lodge County relative to Sunday Laws.

Philipsburg, Montana, July 18, 1889.

To the Honorable Delegates of the Constitutional Convention of Montana. Gentlemen, sirs. We, the undersigned, citizens of Deer Lodge County, and Territory of Montana having the interests of the Commonwealth of the future State of Montana in view, do hereby pray and petition your honorable Body to grant favorable consideration for the better observance of Sunday in the interest of laboring persons, and people generally, and the promotion of morals, and that we most earnestly solicit calm and deliberate consideration of the important questions involved, carefully guarding against any influence manifestly antagonistic to the protection of all religious societies in their views, customs, usages and rights as pertain to disturbance of worshippers, or the orderly condition of society.

(Signed) G W. JENKINS, and 67 others.

The President: If there be no objection this petition will be received and referred to the Committee on Miscellaneous Provisions.

Mr Haskell of Dawson: I have a protest from Dawson County Inhabitants against the passage of the Conrad Resolution, and ask that when it is read it may be referred to Committee No. Ten.

The President: The Protest from Citizens of Dawson County will be read.

Mr. Courtney of Silver Bow: Mr. President, I understand that is a protest against the passage of the Conrad Resolution. If so, I ask that the reading be dispensed with inasmuch as the Conrad Resolution was voted down yesterday.

Mr. Maginnis of Lewis & Clarke: It may have some influence on the judgment of the Convention afterwards. I ask that it be read.

The Clerk read as follows: "We, the undersigned, citizens of Glasgow, Montana, do earnestly and respectfully remonstrate against the insertion of the Conrad clause in the constitution of Montana in regard to the requirement of a taxable valuation of three million of dollars in all new counties hereafter created, for the following reasons:

First, That the present county seat of Dawson county is at Glendive, more than one hundred miles from this place, and can only be reached by rail by traveling a distance of nine hundred miles by going to Helena and thence by the Northern Pacific Railroad, or by going to Fort Buford by stage, a distance of more than two hundred miles.

Second: Glasgow contains a population of four hundred inhabitants and is situated near the geographical center of the northern part of Dawson county on the St. Paul, Minneapolis and Manitoba Railroad, which has two hundred and nine miles of road-bed in said county. It is desired by all that the present county of Dawson be divided at the Missouri River, and that the coming seat may be located at Glasgow at the next session of the legislature, as the people living in this county north of the Missouri River have nothing in common with those south of said river, and it would be very unjust to us to incorporate such a clause in the constitution of the State of Montana, thereby forcing us to submit to the present inconvenient and expensive condition of affairs for years perhaps, or until an assessed valuation of three million of dollars may be attained.

That this arbitarary and unjust clause may not be inserted is the earnest desire of our citizens; and your petitioners will ever pray.

(Signed) A. J. McMILLAN, and 65 others.

The President: If there be no objection this remonstrance will be received and referred to Committee No. Ten, on City, County and Town Organizations. It is so referred.

Mr. Dixon of Silver Bow sent up Report from Judiciary Committee.

The President: The report of the Chairman of the Committee on Judiciary will be read.

The Clerk read as follows: Mr. President, your Committee on Judiciary, to whom was referred Resolution by Browne of Choteau, herewith return, have directed me to report that they have examined the question referred, and are of opinion that the Enabling Act of Congress provides for a General Election to be held, before admission, to fill all the offices, both State and County, provided for by the Constitution, but that such provision is not mandatory, and that this Constitution has the right and power, in its discretion, to provide that all or any State, District or County officers provided for by the Constitution, shall be elected at such time and for such terms as may be prescribed, or, to provide that any District or County officers now holding their offices under the laws of the Territory, may continue in office under the Constitution until such time as may be prescribed. Your Committee are of opinion that the whole matter is within the power of the Convention to regulate.

(Signed) W. W. DIXON, Chairman.

The Clerk read the Resolution of Browne of Choteau referred to as follows: Resolved that the Committee on Judiciary of this Convention be instructed to consider and report whether the Enabling Act of Congress provides for a General Election to be held before admission to fill all the offices both State and County created by the Constitution.

The President: If there be no objection this report will be received

Mr. Browne of Choteau sent up a report.

The President: The report of the Committee on City, County and Town Organizations will be read by the Clerk.

The Clerk read as follows: Mr. President, your Committee No. Ten, have had under consideration the subjects pertainng to City, County and Town Organizations, and have instructed me to report the following articles, and recommend that the same be incorporated into, and become a part of the Constitution.

(Signed) DAVID G. BROWNE, Chairman.

"Article on Municipal Corporations and Offices.

Section 1. The several counties of the Territory of Montana, as they shall exist at the time of the admission of the State into the Union, are hereby declared to be the counties of the State until otherwise established or changed by law.

Sec. 2. The Legislative Assembly shall have no power to remove the county seat of any county, but the same shall be provided for by general law; and no county seat shall be removed, unless a majority of the qualified electors of the county, voting on a proposition at a general election vote therefor; but no such proposition shall be submitted oftener than once in four years, and no person shall vote on such proposition who shall not have resided in the county six months, and in the election precinct ninety days next preceding such election.

Sec. 3. That the Legislative Assembly shall provide by general law the manner in which a part of any county may be stricken from such county and added to another county; or formed into a new county

Sec. 4. In all cases of the establishment of a new county, it shall be held to pay its ratable proportion of all then existing liabilities of the county or counties from which it is formed, less the ratable proportion of the value of the county buildings and property of the county or counties from which it is formed.

Sec. 5. When any part of a county is stricken from one or more counties and attached to another, the county to which such part is attached shall be liable to pay the ratable proportion of such part of all then existing liabilities of the county or counties from which such part is taken, less the ratable proportion of the value of the county buildings and property of the county or counties from which such part is taken.

Sec. 6. When any county formed from contiguous territory taken from older counties, or when any county to which territory shall be added taken from an adjoining county, shall fail to pay the proportion of indebtedness of such territory to the county or counties from which it is taken, then it may be lawful for the county from which such territory has been taken to recover from the county so failing to pay, by action at law, the proportion of indebtedness for which it shall be liable, as provided in the two preceding sections.

Sec. 7. The Legislative Assembly shall provide by law for the subdivision of the several counties of the State into townships, districts or precincts, of convenient number and size.

Sec. 8. The Legislative Assembly shall provide by general laws for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the power of each class shall be limited by general laws, so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. The Legislative Assembly shall also make provision, by general law, whereby any city, town or village, existing by virtue of any special or local law of the territory, may elect to become subject to and governed by the general law relating to such corporation.

County Officers.

Section 9. In each county there shall be elected three county commissioners, who shall compose the Board of County Commissioners, and who shall hold sessions for the transaction of county business as provided by law, any two of whom shall constitute a quorum for the transaction of business. The board shall elect one of its members chairman.

Sec. 10. The term of office of the County Commissioners shall be four years, except as otherwise provided for in this Constitution. At the first general election provided for by this Constitution there shall be elected in each county three County Commissioners. The one receiving the highest number of votes shall hold his office until the general election in 1896, the one receiving the next highest number of votes shall hold his office until the general election in 1894, and the one receiving the lowest number of votes shall hold his office until the general elction in 1892, and each shall hold his office until his successor is elected and qualified. A vacancy in the Board of County Commissioners shall be filled by appointment of the Governor.

Sec. 11. There shall be elected in each county the following officers: One County Clerk, who shall be Clerk of the Board of County Commissioners, and ex-officio recorder of deeds; one Sheriff, one Treasurer, who shall be collector of taxes; one County Superintendent of Schools, one County Surveyor; one Assessor; one Coroner; one Public Administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of two years; except that the county officers elected at the first general election provided for in this constitution, shall hold their offices until the general election in 1892, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of County Commissioners, shall be filled by appointment by the Board of County Commissioners, and the appointee shall hold his office until the next general election.

Sec 12. No person shall be eligible to any county office unless he be a qualified elector, nor unless he shall have resided in the county at least one year next preceding his election.

Sec. 13. The Legislative Assembly shall provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require, and their terms of office shall be as prescribed by law, not in any case to exceed two years, except as in this Constitution otherwise provided.

Sec. 14. The compensation of all county, township and precinct officers, except as in this Constitution otherwise provided, shall be as prescribed by law.

The Clerk also read report of said Committee as follows: Mr. President, your Committee on City, County and Town Organizations, to whom was referred "extract from Proposition No. 7" introduced by Mr. A. R. Joy, beg leave to report that they have had the same under consideration, and respectfully return same with the recommendation that it be passed.

(Signed) DAVID G. BROWNE, Chairman.

The Clerk also read the further report of said Committee as follows: Mr. President, your Committee on City, County and Town Organizations, to whom was referred Resolution No. 6, introduced by Mr. Goddard of Yellowstone, beg leave to report that they have had the same under consideration, and respectfully return same without recommendation.

(Signed) DAVID G. BROWNE, Chairman.

The President: Both of these Resolutions referred to in the reports of the Committee will take the usual course, and be placed on file, to be considered in Committee of the Whole, with the report of the Committee to which they were referred. If there be no objection the report of the Committee upon the subjects pertaining to City, County and Town Organizations will be referred to the Committee on Printing, and ordered printed.

Mr. Joy, of Park: I offer the following report, and ask that it be considered in connection with the majority report of Committee No. Ten.

The President: The minority report offered by part of Committee No. Ten will be read.

The Clerk read as follows: Minority report of Committee on City, County and Town Organizations. Mr. President: A part of your Committee on City, County and Town Organizations, having under consideration Resolution No. 6, introduced by Mr. Goddard, beg leave to report back the same, and recommend that it be incorporated in our Constitution.

(Signed) ALLAN R. JOY, L. ROTWITT, W. C. GILLETTE.

The President: This report will take its place with the majority report, and be considered in Committee of the Whole.

Mr. Maginnis, of Lewis & Clarke, sent up a resolution which was read by the Clerk as follows: Resolved, that nothing contained in this Constitution shall be so construed as to deprive the General Assembly of power to authorize municipal corporations in incur such indebtedness as may be necessary to procure an ample supply of water for such municipality; provided that such water supply shall be under and controlled by said municipalities and the revenues derived from the same applied to the payment of the debt.

The President: This resolution will be referred to Committee No. 7, unless otherwise directed by the Convention.

Mr. A. J. Burns, of Lewis & Clarke, sent up a resolution.

The President: The gentleman from Lewis & Clarke, Mr. A. J. Burns, offers the following resolution.

The Clerk read as follows: Mining Bureau. Resolution by A. J. Burns of Lewis & Clarke. Section 1. There shall be established a Mining Bureau and office of Commissioner of Mines, the duties and salaries of which shall be prescribed by law. When said office of Mining Commissioner shall be established, the Governor shall with the advice and consent of the Senate, appoint thereto a person, known to be competent, whose term of office shall be four years.

Sec. 2. The General Assembly shall provide by law for the proper ventilation of mines, the construction of escapement shafts, and such other appliances as may be necessary to secure the safety and health of the workmen therein.

Sec. 3. The Legislature may make such provisions from time to time as may be necessary for the proper and equitable drainage of mines.

Sec. 4. The Legislature shall provide that the science of mining and metallurgy shall be taught in one or more of the institutions of learning in the State.

The President: If there be no objection, the resolution will be received and referred to Committee No. 13.

Mr. Meyers of Yellowstone sent up the following Resolution, which the Clerk read as follows. Resolution. Resolved that no person holding an office of profit under the United States, and commissioned by the President, shall, during his continuance in such office, be eligible to be appointed, hold, or exercise any office of profit under this State.

The President: If there be no objection, this Resolution will be received and referred to Committee No. 13.

Mr. J. R. Toole, of Deer Lodge: Mr. President, under the head of general orders, I move that the Convention resolve itself into Committee of the Whole for the consideration of general orders.

The motion was seconded

The Chair put the question on the said motion of the gentleman from Deer Lodge (Mr. Toole), and a vote being taken the same was declared carried.

Mr. Chessman, of Lewis & Clarke: I would like to inquire if there is not a special order for eleven o'clock

The President: I think it was two o'clock this afternoon. There was a special order for yesterday at eleven o'clock for the consideration of File No. 1. There is no special order for consideration at this hour today.

Mr. J. K. Toole, of Lewis & Clarke: Mr. President, I think the records will disclose that on the day before yesterday, the Article on Education was made the special order for eleven o'clock, and that of the Right of Suffrage for two o'clock.

Mr. Collins, of Cascade Mr. President it is not the Article, but the Resolution relating to School Lands. I understand that is the special order today for eleven o'clock

Mr Craven, of Lewis & Clarke. I do not remember of any such order being made, and under the previous Resolution passed by the Convention, this Resolution would be taken up in connection with the report of the Committee on Education, no subject having been more carefully considered by that Committee than the matter of the School Lands.

The President: The Clerk informs me that there is no record of any special order for today. Hence, the motion offered by the gentleman from Deer Lodge is before the Convention that the Convention resolve itself into Committee of the Whole. I believe the question has been passed upon. I will appoint Major Maginnis Chairman of the Committee.

IN COMMITTEE OF THE WHOLE.

Mr. Maginnis of Lewis & Clarke in the Chair.

The Committee was called to order.

The Chairman: The Committee have under consideration section 13 of Proposition No. 26. Article on Judiciary. The Clerk will proceed with the reading.

The Clerk read Section 13 as follows: Sec. 13. Until otherwise provided by law, said districts shall be constituted as follows: First District, Lewis & Clarke County; Second District, Silver Bow County; Third District, Deer Lodge County; Fourth District, Missoula County; Fifth District, Gallatin County; Sixth District, Jefferson County; Seventh District, Custer County; Eighth District, Beaverhead and Madison Counties; Ninth District, Park and Yellowstone Counties, Tenth District, Cascade and Meagher Counties; Eleventh District, Fergus and Dawson Counties; Twelfth District, Choteau County.

Mr. Joy of Park: I would like to offer an amendment to Section 13.

The Clerk read the said amendment as follows: Amendment to Section 13. Strike out in fifth line "and Yellowstone Counties" and renumber the subsequent districts.

Mr. Witter, of Beaverhead: Do I understand there is a motion pending?

Mr. Rickards, of Silver Bow: I would like to ask for information. It is my recollection that when the committee had this matter in hand the other evening, that we were considering an amendment offered by Mr. Collins of Cascade. My memory may be at fault.

The Chairman: The Chair was not present at the time.

Mr. Carpenter, of Lewis & Clarke: Perhaps I can explain this matter, I have an amendment which I offered, and which I will send up to the Chair. First, there was an amendment offered by Mr. Hickman of Madison to strike out the word "and" in the fourth line, and then there was a substitute offered by the gentleman from Cascade which read as follows: "Until otherwise provided by law, each county in the State shall constitute a separate judicial district."

The Chairman: The Clerk will read the amendment to the amendment, on which the vote will be first taken.

Mr. Hickman, of Madison: Mr. Chairman, I will withdraw the amendment offered by myself.

The Clerk read the Substitute of the gentleman from Cascade, Mr. Collins, as follows: "Until otherwise provided by law, each organized county in the State shall constitute a separate judicial district."

The Chairman: The motion to adopt is before the Committee.

Mr. Collins, of Cascade: Mr. Chairman, the Committee on Judiciary had provided twelve districts. I thought that if the Committee, in their wisdom, saw fit to divide this great State into twelve districts, that it would be in the interest of good government, and in the interest of economical government that four more districts should be created, and that each county shauld be made a district. I believe so still. I believe that if you divide this State into twelve districts, it should be divided into a district for each county in the Territory. I believe, if that is your policy, that in doing away with the office of Probate Judge, and the Clerk of that court, and the extortionate fees for probate and civil business in that court, that it will be economy to make four more judicial districts. The cost of the present system, with even twelve districts, amounts to about $54,000. Make four more districts and it will amount to about $60,000. That is an enormous sum of money, and if any gentleman in this body will propose an amendment consolidating those districts into six or seven or eight, I will be willing and happy to withdraw my amendment; but if you divide them into twelve districts, I say it should be divided into sixteen, and give each county a separate district. If you divide it into six, seven or eight districts, then I would withdraw my amendment and be in favor of more compact division.

Mr. Whitehill, of Deer Lodge: Mr. Chairman, I hope the gentleman will not withdraw the substitute. I am heartily in favor of the substitute, as it has been proposed. I have advocated that proposition time and again, and I think when this Convention comes to calmly and clearly consider this proposition, that they will come to the same conclusion. Now, there is only one objection that has any force to it whatever, and that is, that apparently we are incurring what seems to be a great expense. It staggers some of the gentlemen of this Convention when it is figured up. and it is shown that this judicial system will cost, by giving one judge to each county, about $66,000 per annum. Now, I think that when you take into consideration the whole system, and the expense which will be cut off by that, that it will be seen that this rule is less expensive than the system which we have now in force in Montana Territory, and then we will have all the advantages. Now, under our present system, there are sixteen judges in Montana, Probate Judges, who are receiving some compensation or other. They are being paid; they have work to do. In addition to that, there are four district judges, making at the present time, twenty judges in Montana Territory, and I presume they are all doing something. and all earning what they are paid. Now under the present system, as proposed, with one judge in each county there will be sixteen judges, and three supreme court judges, which will make nineteen judges, whereas, under the present system we have now twenty judges. Then, the only valid objection that can be made to this is, that these nineteen judges will cost about $66,000. I have not figured up what it costs at present, but I have no doubt that it costs a sum very nearly that amount under our present system. Part of these four district judges cost the Territory nothing; they are paid by the Government of the United States, and some of the probate judges are paid only by fees. But that comes out of the people. It may not come out in the way of taxes, but the fees that these judges get, and the salaries which are paid to the district judges by the United States, I have no doubt, amounts to almost as much as what is proposed in this judicial system. Now, this we have virtually adopted, the California system, that provides for a judge in every county. They have abolished the Probate Court, and that is a very important court in this Territory. In the county in which I reside we have a Probate Judge, and a Probate Clerk, who receives a salary of $100 a month. I have no doubt the cost of the Probate Court in Silver Bow County, and in Lewis & Clarke County is more than it is in Deer Lodge County. I have no idea of what its cost is in other counties, but here we are assuming the work now that the sixteen judges are performing and all the different clerks, and that expense is all incorporated in these judicial salaries. Now, that has been found to work to perfection in California. I was living in California when this system was adopted there, and I know that the principals, the litigants, and all classes of people felt that a load had been taken off their shoulders when that Constitution had been adopted, notwithstanding the assertion of the gentlemen here that its constitution was a conglomeration of nonsense, and I will admit that at the time Dennis Kearney, and the "sand-lot" orators had sway in San Francisco, that many things were done that perhaps are now justly criticised. But in regard to this proposition of the judiciary, that was a proposition that was gotten up, and a system that was framed and formed by the best legal talent in San Francisco, and, I believe, that is equal to Montana, or any other State in the Union. Now, the Chairman of that Committee was one of the ablest lawyers in San Francisco. and in reply to the objection made by the gentleman from Madison when he says that that is the most expensive system that has ever been organized, that owing to that system California has 10,000 cases on her calendar, I will say that I have read and I will ask leave to read four or five lines as to what Mr. Wilson, the Chairman of that Convention, said, in introducing the present system which we are now acting upon. He said, in referring to the business of the old court, a court which was organized very much as the courts of this Territory are now under our present system: "The business of the Supreme Court of the State of California is, I think, larger than that of any Supreme Court in the American Union,—larger than the Supreme Court of any other State" Now. this was from a speech made ten years ago. The report made to the Convention by the Clerk of the Supreme Court said that "during the four years past there have been filed in the court some 2,057 cases, making an immense calendar for that time" The Supreme Court did decide during that time some 2,246 cases. Now, that was in a period of three years, and the gentleman has well said that since then the amount of business in the California courts has greatly increased; but he charges that to the judiciary system, whereas everybody knows that the population of California has trebled since that time, and that is only in about the same proportion that the cases were increasing in those courts before. So, I say that the objection to this system amounts to nothing. And if we are to have a good judicial system, I believe in making it so that the litigants in each county can be justly represented. Now, we have introduced in this provision a proposition, or a section, or a sentence which provides that one-half of the salary of each judge shall be paid by the State. I believe that is a fair and just proposition. The Judiciary System is not a county system, which will be uniform throughout each county. Now, I venture to say that if any other proposition than this is adopted it will be unfair, for I can demonstrate to the minds of this Convention that there will be an unjust tax in regard to the support of the judges. Now, under this system, we will take the county that has, we will say, $4,000,000 of taxable property. The judge of that county will be paid, we shall say, $4,000 per annum. That requires a tax of one mill on the dollar. One mill on the dollar, where there is property of $4,000,000 in value, will pay a salary of $4,000. Now, take a county that has $8,000,000 of taxable property, and that county will only have to pay for its judge one-half a mill on the dollar. Now, is there any reason why a gentleman who lives in Dawson County, or we will say in Jefferson County where the taxable property, I believe, is $4,000,000—is there any reason why a citizen living in Jefferson County shall be taxed one mill on every dollar for which he is taxed, whereas in Silver Bow County the citizen is only taxed one-half of one mill for judicial purposes. I say there is no justice in any law which will provide a discrimination in the taxes for the same support. Perhaps that will come a little harder on the gentlemen who live in the more populous counties, but I say it is an equitable and a just mode of taxation. I cannot see any sense in arguing why a man living in Dawson County shall be taxed more for the privilege of having good courts than he shall be taxed in Lewis & Clarke, or Silver Bow, or Deer Lodge Counties, and I say the only way you can arrive at this, so that it will be just and right to the citizens of each county is to adopt this proposition as it is, and even that is not right. I say to make it fair and just and equitable the whole tax of these judges should be paid out of the State Treasury. Look at Dawson County. Why, even under any system the man in Dawson County will have to pay, if the judges get $3,000 and the taxable property is $1,000,000—the citizen of Dawson County will have to pay three mills on every dollar to get his judge. Now, I say it is not fair, and that this proposition approaches fairness nearer than anything that has been presented to this Convention. Now, in regard to the working of this system. I will venture to say that there are no two counties of equal population that are joined in a judicial district that will be at all satisfied with it; that before there has been a second election in any one of these counties there will be petitions coming into the Legislature for the purpose of asking that they be separated. I happened to live once in a judicial district where there were two counties that were represented in the judicial convention, and although here in this Convention we have made no arrangement yet as to how the judges will be selected, I think there is no doubt but that they will be elected by a vote of the people, and that they will not be appointed by the Governor. The Governor might avoid the difficulty which I propose to demonstrate will rise and that is just this. I presume that the selection of judges will be by a political party. The party will nominate a judge for that position in each district. Now, I say in districts where there are two counties that have about an equal population, that the delegates from each county will go into a judicial convention, or some convention for the purpose of selecting this judge. Each county will have—think of it!—each county is equally represented, and those delegates will stay there until doomsday fighting for their own man unless the question is settled in some way, which I say will not be proper in the selection of candidates for that office. Now, I say I lived in one district of two counties, which were equally represented. One of the counties very generously decided to give to the other the right of selecting a judge, and there was no trouble. They had a gentleman who was eminently fitted for the position, and the other county conceded that he was a proper man; but they had candidates in that county who would have been very glad to have taken the nomination. And it was understood, and that arrangement was made, at the next regular election the other county would have the right to make the nomination. I happened to be a delegate in both of those Conventions, in the first one when the arrangement was first made, and also in the second one. When the two years came around and another judge was to be selected, the gentleman who had held the office knew that delegates were to be sent to a judicial convention men that were not bound by the action of any former convention, and they came in and presented a candidate again. The county which claimed that it was their turn very properly had a gentleman whom they desired for judge, and they wrangled and wrangled and quarreled, and for two days they balloted to select a judge No judge was selected. They went home to their constituents, new delegates from each county were sent, and they came together, and they parted after thirty or forty attempts to nominate a candidate without any success until it was proposed that one member from each delegation should go out behind a haystack and toss up a half dollar as to who should be the judge Now, that is what you gentlemen are proposing by uniting counties in this convention where they are nearly equal. You are proposing, and you will adopt a gambling proposition to select your judge, and I say that is not right. I say to you when you come to consider the fact that there will be no greater—and I think that can be clearly shown to this Convention—that the expense of this whole system will not be greater than it is now. Now, under the present system, where we have one judge in each county, I will guarantee that to the County of Deer Lodge this system will be a saving of $15,000 a year on one item. I am told by the County Commissioners of Deer Lodge County that they pay $1,700 a month for the support of the prisoners in our jail. A great majority of those prisoners are kept there, are bound over to appear before the Grand Jury, and a few are held for the serving out of terms for misdemeanors. But there will be more than $1,000 a month saved to the County of Deer Lodge under this system which we propose to inaugurate, and so although it may appear that a larger tax is levied, and it will be—if we are going to form a State Government we have got to make these offices and pay for them; you will get no support from the Government of the United States—and there will be apparently a larger tax for State purposes. But when you come to cut down expenses in county taxes, they will not be so large. I apprehend that in organizing this State, at the present rate, we pay two mills on the dollar, that is, pay into the treasury. Now, if we are going to carry on government offices, there have got to be executive officers, and I believe in paying good salaries I believe in selecting men who can perform the duties creditably I do not believe in this idea of saying, "make a salary of $1,000 and you can get a man to fill it." I do not believe that is the proper method of selecting officers Now I am in favor of even larger salaries than are provided for in this Constitution, but after talking with the more conservative members on the Judiciary Committee, I was perfectly satisfied to leave them as they are. And I will say right here that I believe that most of the gentlemen that were on that Committee when this proposition was adopted, were in favor of each county having its own judge, provided each county wanted one; they were in favor of letting these counties, where they desired it, to be united, and in that way saving a few dollars. But the only question with the members on the Committee was, that to make the salaries higher and to make more districts would give the people a chance to say that the lawyers were making these districts for their own benefit No, I do not believe there is an idea in the minds of any solitary man on the Committee of that kind; I think all were inspired with motives of honesty and honor in organizing a system which they thought would be for the advantage of the people, and if lawyers should be benefitted why not them as well as anybody else. If they should receive more business, I think it is proper enough lawyers should receive their benefits. But, I say, that that idea never entered the heads of any members of that Committee. And so, I think when this matter is fully discussed from all standpoints, I do honestly believe, that every member of this Convention will say that this amendment offered by the gentleman from Cascade is the best and will be the most serviceable to the people, and I strongly support the propsition of the gentleman from Cascade.

Mr. Parberry, of Meagher. I have been listening with a good deal of interest to the eloquent speech of the gentleman from Deer Lodge; yet I am of the same opinion still that the substitute offered by the gentleman from Cascade ought not to be incorporated in this Constitution. I came here to attend to the business of the people of Meagher County the same as I would attend to my own individual business, and if I can have the same service done, and done right, for $3,000 that I can have done for $9,000, I certainly would do it; and I am perfectly satisfied that three of the smaller counties can be united in one judicial district, and the judge would be competent to attend to all the business in those three counties just as well as one. The substitute that I have offered there to Section 13, is based upon the population of these several districts, taken from the reports of the auditor and treasurer of this Territory. I find that in Lewis & Clarke County in 1888 there was a vote of 6,001; and Silver Bow County 7,225; and Deer Lodge County, 5,400 and something; in Missoula, 3,600. Now, I believe that those four counties are entitled to a judge on account of the vote polled in 1888. Now if you will take the vote of Deer Lodge, Jefferson and Madison, and put them all together, they are not equal to the vote of either Lewis & Clarke or Silver Bow Counties. If you will take the vote then of Meagher, Gallatin and Park, you will find that those three are not equal. You may take Yellowstone, Custer and Dawson, and they are not equal; they are away below. Well, then, you have Cascade, Choteau and Fergus, and that is only 4,400; and it divides up in that way. Now, Missoula, it is true, is the smallest, being only 3,600, but being situated in the extreme Western portion of the Territory, we could not well join it with another county. This makes eight judicial districts, and I think one judge can well attend to all the business in any one. As regards the State paying for half of these salaries, I can look at that in no other light than that of a man putting his hand in his left-hand pocket, or putting it into the right-hand pocket to pay a bill. We have indirectly to pay it. It is true, there is a little advantage to these counties that pay a large amount; but now take Dawson County, where there is a vote of 400 and something. There is Custer of 900. Now, both county seats being located on the line of the railroad, so that you can go from one county seat to the other on the railroad, I think that one judge can attend to that district; and that substitute that I have offered there to section 13 is made with the view of facilitating the getting from one county seat to another, and is based upon the vote of 1888, so as to get at the average of the business to be done in each district.

Mr. Hartman, of Gallatin: Mr. Chairman, I do not intend to occupy but a very few minutes in reply to the gentleman from Deer Lodge. There were one or two propositions advanced by him that do not seem to me to be in accordance with reason. In the first place, from the tenor of his remarks, he seems to indicate that those persons who are opposed to the single county system for a district are also in favor of retaining the probate courts. I do not believe that there is a man on the floor who advocates the consolidation of those districts who is in favor of retaining the probate courts, and therefore insofar as the salaries are concerned, our system is the same as his. Where we differ is in the distribution of them. He wants to distribute this money to three or four judges where we want to distribute it to one. We want to distribute it to eight judges throughout the State. He wants twelve when eight will do the work. Now, there is another proposition about it. It is an easy thing for gentlemen to rise up on their feet here and declare that a certain system is an economical system; it is another thing to demonstrate it. He has absolutely failed in every particular to show a single item of saving. Let us see from what sources expenses are made in the management of courts. In the first place, there is the salary of the judge. By our system we have a saving there. In the second place, there is the payment of the Sheriff's fees. In our system, we are on exactly the same footing. The third, the payment of jurors; our system is on the same footing with his. Witnesses are in the same condition. Therefore, there is but one item left, and that is the question of the payment of mileage to judges. I have heard it asserted here in private conversation by members of this convention that the mileage of judges going between the two or three counties which may be situated in a district, would equal the salary of the judge. Why, gentlemen, it is absurd to say a thing of that kind. In the first place, if you put three counties in one district, and they are properly distributed with regard to their geographical location, there will not be a greater distance than 500 miles between the farthest county seats of the respective counties. That being the case, that would make 1000 miles travel for the judge for each term. Supposing there are four terms a year; let us admit there are five; there are 5000 miles to be traveled by the judge. Now, as to mileage, the law allows 15 cents per mile; let us admit he will be paid 20 cents per mile; there you have $1000 mileage. Now is $1000 equal to $3000? If it is, then the gentleman's argument holds good; if it is not, then his argument is fallacious. Now, upon the question of this argument about the State paying half of the salary, why, it is silly to make an argument of that kind, to say that it does not afterward come out of the people. Who furnishes the money that goes into the state treasury? Why, the taxpayer.

Gentlemen of the Convention we are not here to confer a favor upon the people of any county. We are here to confer equal benefits and equal burdens upon every citizen of this great State, and when a gentleman gets upon the floor here for the purpose of saying that he proposes to confer a special favor upon the people of some particular district as against some other district, I say he is advocating a doctrine that is pernicious and is opposed to the very principles upon which our government is founded and upon which all of our institutions are controlled. I belong to one of the smaller counties myself and our people would reap a benefit, but, gentlemen of the convention, I do not believe in it as a matter of principle, and although it may be a benefit to our people, I shall oppose that kind of a system. Now, as to the question that was raised here by the gentleman from Deer Lodge as to the difference which might possibly arise between the members of different conventions who had met to nominate men to the various judgeships, I do not suppose it is necessary to reply to it at all. It had no more application to the question than if he had quoted a Fourth of July oration or the Sermon on the Mount. I am opposed to this system of creating more districts than are necessary. Let us, as I said the other night, furnish sufficient districts to suit the present conditions; then furnish an expansive system whereby the Legislature can provide additional judges whenever the demands of the people require it.

Mr. Goddard, of Yellowstone: I wish to inquire if an amendment is in order at this time.

The Chairman: No sir.

Mr. Dixon, of Silver Bow. I desire to say on behalf of the judiciary committee that there was a good deal of difference between them in regard to the division of the State into districts. The proposed section reported here was suggested and reported not so much really as a recommendation of the Judiciary Committee, but as a basis upon which the Convention might act in finally fixing the division of the State into districts. Now, so far as I am concerned, and I think I represent the sentiments of the Judiciary Committee, I would be very glad to see this matter of the districts settled so that every county would be satisfied with the place assigned it; but I know that that is impossible I would be in favor of this system of allowing every county to be a district by itself if it were not for the consideration of what I deem unnecessary expense which would be incurred thereby So far as I am concerned, I believe the report of the Committee itself provides for more districts than are necessary. There are twelve in number according to this report. I think myself that eight, or at the outside nine, are all that are required; and I agree substantially with what I understand to be the substitute proposed to be offered by the gentleman from Meagher as to the constitution of the districts and the counties which it is proposed to put together. Now, we must consider this thing from a general point of view. It is not only with reference to the interest and convenience of particular counties, but it is with reference to all the people of the State who are to be affected at least in the matter of taxation by what may be done in the arrangement of these districts. Now, I have no doubt that even in the smallest county in the territory it would be a saving over the present system to allow that county to have a judge. In the saving of the probate judge's salary and in the saving of other expenses that are now incurred, I think the county would at least lose nothing. But that is not the proposition here. I mean to say that the county could take itself half of the salary which it would be required to pay without any loss to itself; but the other half has got to be paid by the State if that provision in this article as reported is to be adopted; and as to that, it seems to me it is necessary to consider whether or not that can be saved. As has been well said here, it seems to me a proposition so self-evident that it is not necessary to argue the fact, that if you can get the same service as well performed for $3000.00 there is no necessity of paying the sum of $9000.00 for it. Now, I take it, Mr. Chairman, that we have got to come to a realization of this fact, and we may as well look at it right now as at any other time We have got to watch as carefully as we can every provision in this constitution to see that no unnecessary expense is incurred in the support of the State government. We are going into a new and necessarily more expensive system than we have been accustomed to and we must guard every question that comes up against any unnecessary expense being imposed upon our state, because that expense has got to be met by taxation which takes the money directly from the people. Now, it seems to me that to propose to provide a judge for each county when there is no business in that county to require it, when that judge in two or three months in the year could do all that is necessary to be done and the rest of the time would be idle, is not only incurring an unnecessary expense, but it is a bad precedent. I believe in paying every person a fair salary for his services, but I would require him to do work in return. I do not believe in giving any man a sinecure; I do not believe it would be good for the judge. Let a judge in one of these counties dispose of his business in sixty days and let him loaf the rest of the time and he would become in the course of a year so demoralized that he would not be qualified for the office, he would not have employment enough to keep him in good mental health, he would retrograde. And what is the use of employing a judge to do such a small amount of work when he can with a saving to the State and with more benefit to himself, perform the same duties in three counties. It seems to be entirely unnecessary to incur such a useless expense Now, I want to see this judicial system have a fair trial. I do not want to see it burdened down at the start with so many and such unnecessary expense as that the people will throw it aside, attributing to the system what would properly be attributed to its administration, neither in the judicial departments nor in any other.

Now, you take this matter with regard to the salaries. Here are half of the salaries provided to be paid by the State. As I said before, the county may come out even on paying its half but for that half paid by the State there is a contribution levied on every taxpayer of the state. It makes no difference to the taxpayer whether he pays so much in county tax or so much in state tax or whatever else you may call it, it all comes out of his pocket, and the man in Dawson county will pay just the amount of state tax that the man in Lewis and Clarke county will. Here are three counties which might be put together in which one judge can attend to all the business. He will be paid, say $3000. Now, it is proposed by some instead of that to pay $9000. There is a saving, putting this in one county, of $3000 to the state alone besides, it will be a saving to the county. In one case, the county will pay $1500; if there are three counties, it will be in proportion which would be $500 each. There is a saving to the state in the same way; it is a saving in both ways; and certainly it seems to me a very extravagant and unnecessary idea to leave these counties separate whatever convenience it may lead to. Of course, there are conveniences which are nice and pleasant and that we like to have, but we all know that in our own private affairs, it is a rule, I believe, that we all have to have things that are not exactly what we would like but what we are able and can afford to pay for. This judicial system proposed here, with a judge for each county at the salaries proposed would make over $50,000 for district judges besides $15,000 for Supreme Court judges. Under the proposed arrangement, $40,000 would be paid by the state. Well, now, just for the single item of judicial salaries in one year there would be an expense to the state, let alone the counties which we need not consider, of $40,000. Now, would not the people have a right to say that for the administration of one department of government that was a great burden for a new State to assume? When they looked the matter over and found there were three judges appointed where one might have done the service, would not the people be inclined to say, "You gentlemen, in creating such a system as this may have had in view the rights of the people and the saving of taxation, but you had more regard to the convenience and prejudices and wishes of certain smaller counties than you had for the interest and concerns of the people of the state."

I hope, Mr. Chairman, that this amendment to make each county a judicial district will be defeated; and as I said before, I am in favor substantially, if I understand the matter, of the substitute which I believe has not but I think is intended to be proposed by the gentleman from Meagher county.

Mr. Rickards of Silver Bow: I understand there has been an amendment sent to the desk. I would like to have it read

The Chairman: The clerk will read for information the amendment of the gentleman from Meagher (Mr. Parberry) which, however, is not in order at the present time.

Mr. J. R. Toole. Mr. Chairman, I wish to ask if a motion to refer this section would be in order

The Chairman· I do not think that motion would be in order at this time The Committee would have to rise.

Mr. Rickards, of Silver Bow: Where doctors disagree, a layman, I suppose, should not presume to tread. I have been very highly entertained and edified by the controversy we have had over this section. We heard the other evening about the musical bray of the Rocky Mountain donkey; we heard about having to accept one of two horns of an unmentionable name, we heard about mandamuses and other profane things, but I rise to my feet to emphasize if I can what has been said by the gentleman from Meagher (Mr. Parberry), the gentleman from Gallatin (Mr. Hartman), and the gentleman from Silver Bow (Mr. Dixon) in turn, and from a business man's standpoint I want to say that I feel we had better take a conservative view of this matter. Most generally, I can heartily endorse any proposition offered by my friend from Cascade (Mr. Collins), but in this matter I feel that he is not up to the usual standard of his excellent judgment. Now, unfortunately, the impression is getting abroad that we are sitting here creating offices for the office seeker, and I think we had better be a little careful lest we give color to this impression. I, for one, do not believe this is the sentiment of this body. Nevertheless, we have heard mutterings of a distant storm in that directoon. Now, I believe that one of these amendments should be adopted. I am free to confess that I am not quite clear as to which one would be the better to adopt, but I am certainly in favor of the adoption of one of these amendments making either seven or eight districts in lieu of the original section; and I, for one, was pleased to hear Mr. Dixon, the chairman of this committee, mention that in his judgment we can safely adopt a fewer number rather than a larger number, and it does seem to me that the argument advanced by my friend from Gallatin (Mr. Hartman) the other evening and today is unanswerable.

I have heard several members who are members of the legal profession and who have an accurate knowledge of the courts where they practice, say that there is not enough work in the districts as cut out in this report of the Committee to furnish employment for these judges, and that they would have to go fishing or do something else to occupy their time. Now, I submit to you, gentlemen of the Committee, that we are not here for the purpose of furnishing men employment that they may have time to go fishing. As a business man I can find very little time for such amusements, and I do not believe our constituents will endorse us if we, for the sake of satisfying a little local pride—and I do not speak disrespectfully when I say this, but I know that the temptation is strong in that direction, to gratify a little local pride that "our county"—Park County, if you please—may be set off and made a judicial district. I know it is something to be able to say when we go home to our constitutents "See, we obtained for you a district."

Now, then, let us set aside this little local pride and legislate for the entire State, and saying this I heartily endorse what Mr. Dixon said in this direction, and I do hope that one of these amendments will prevail, and without yielding the floor for the moment, I would like to ask for the reading again of that amendment as offered by Mr. Goddard.

The Clerk read the amendment for the information of the gentleman from Silver Bow.

Mr. Rickards of Silver Bow: I beieve, Mr. Chairman, all things considered as I understand the geography of the territory and the needs of these respective counties, that the substitute as offered by the gentleman from Meagher (Mr. Parberry) is the better one, and until I have been convinced to the contrary, I shall support his amendment.

Mr Clark of Silver Bow: Mr. Chairman, when the judiciary report was read and it was stated that this Territory or State was to be districted into twelve districts, it seemed to me then that they had made a very fair and liberal division in this matter; but since listening to the discussions that have been had upon this floor and the information derived from learned gentlemen from various sections of the territory—by Col. Callaway, Mr. Hartman and others—that in these various counties which they represent, a judge might dispose of all the business in the county in a few months and have the rest of the time to go fishing, I am clearly convinced that the number mentioned by the report is entirely too large, and hence I hope the amendment offered by this gentleman will not prevail. I am in favor of one of the amendments that have been offered; I have offered one myself. I am in favor of cutting it down to at least nine districts, and I believe that the administration of justice can be thoroughly effected by cutting this State into nine judicial districts or perhaps less. I doubt if less will accomplish the purpose, for the reason, I believe, that the district justices have jurisdiction in probate matters; but I think it may very properly be cut down to nine districts and thereby save the salaries of seven district judges in the State, which will amount to at least $30,000, one-half of which, I understand, is to be paid by the State. Now, I am in favor of saving six or seven districts and taking some of this money and paying these judges that shall preside in the remaining districts better salaries, and thereby procuring better services for the State than would otherwise be done by allowing each county to have a district and a judge. You will be unable, in my opinion, for the salaries provided in some of these counties, $3300 or $3500, to get competent men to take the positions, and I do not believe in providing places for fledglings from some law school, or putting men upon the bench to dispense justice in this State that are incapable of doing it. Hence I shall oppose the amendment of the gentleman from Cascade.

Mr. Goddard of Yellowstone: When I proposed the substitute I did it with some knowledge of the business of the several counties which were grouped in judicial districts. For instance, in the counties of Yellowstone, Custer and Dawson, I think I have, sufficient knowledge of the business of those counties to be advised on that subject, and I undertake to say that any good, energetic judge who can be selected from some of those counties in that district could perform all of the duties of the judge of that district and have plenty of time as has been said, to go fishing or to play "seven-up" behind a hay stack, as I have heard it suggested by the gentleman from Deer Lodge. Now, in relation to Cascade, Choteau and Fergus, the same proposition is true there. I do not believe that any of those counties has had a term of court lasting over two weeks, and admitting that each of those counties would have a two weeks term of court at every sitting, the judge's time would not be occupied more than half of the year, and the same I believe would be true in Gallatin, Meagher and Park, and also in the district which is composed of Jefferson, Madison and Beaverhead. In arranging these counties, I have had regard to the convenience of getting to and from the county seats of the several counties forming the districts. It will be convenient in the district in which I live for a judge residing at Miles City or even Billings or Glendive, to reach all of the county seats in his district by rail, and in the fifth district, composed of Choteau, Cascade and Fergus, that is true with reference to Cascade and Fergus, or Cascade and Choteau; and as a matter of fact, the mode of travel to Fergus county would be just as convenient from Choteau as from any other point It is the same with the seventh district, Composed of Jefferson, Madison and Beaverhead. There is a railroad now being constructed from Gallatin city to Butte which will I believe reach some point over in Madison county. Pony or some other place there which is about forty miles from the county seat and which will be a convenience in that respect to the judge. Beaverhead county can be reached by way of Butte over that new railroad which will be constructed before any term of court is held in that county. So far as convenience is concerned, it seems to me that the proposition which I have made here is the best. I entirely agree with the gentleman from Meagher (Dr. Parberry) in relation to the districts he has mapped out in his proposition, with the exception of one or two. I believe, that all things taken into consideration, the geography of the country, facilities for travel etc., it will be found that the proposition I have submitted will be more convenient to the judges; and so far as the mileage is concerned, I do not understand that any provision of the constitution or the judiciary act as reported by the judiciary committee, contemplates any mileage for the judges; and in view of that fact, I would be in favor of paying these judges a larger salary than has been reported. These judges having a district of three counties ought to have a salary of $4000. the same as these other counties. While I do not believe the amount of business in the 4th, 5th, 6th, and 7th districts would amount to as much as Lewis & Clarke county or Silver Bow County, yet I believe the judges would be kept busy inasmuch as they would have to travel considerably to reach their county seats, and I believe in that case they should have the same salaries as are allowed in Silver Bow and Lewis & Clarke counties. Now I heartily concur with what has been said by the gentleman from Silver Bow, Mr. Dixon, and his colleague, Mr. Rickards, and others, in regard to the expense of this matter. I have recently returned from eastern Montana and have talked with my constitutents in that part of the territory not only in my district but in the district which is represented by the worthy gentleman from Park county, and I believe it is the sense of the people of those districts that this Convention shall form districts composed of two or three counties, or a sufficient number of counties to give the judge something to do. I believe, as the gentleman from Silver Bow (Mr. Dixon) said, it will make a better judge of a man if he is kept busy. His mind wil be occupied; he will have something to think about; and he will be a better judge. Take any lawyer in this territory and put him upon the bench and furnish him only business enough to occupy half of his time, and at the end of the term of his office he will neither be a judge nor a lawyer; he will be a loafer and nothing else. Now, I am not in favor of encouraging loafers among lawyers; there are enough of them now. (Laughter) Now, my friend from Park county has some reason, I apprehend, for wishing his county to have a separate district, but I do not believe his constitutents down there will carry him out in the proposition he has made to this Convention. I do not say this with any intention of reflection upon the integrity of the gentelman, but simply upon his pride in this matter. Now, if he is so anxious to be a county to himself, I am in favor of attaching him to the Crow Indian Reservation for judicial purposes. (Laughter).

Mr. Burleigh of Custer: I move that the Committee do now rise, report progress and ask leave to sit again.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer (Mr. Burleigh) and a vote being taken the same was declared carried.

IN CONVENTION

President Clark in the Chair.

The Convention was caled to order

Mr. Maginnis of Lewis & Clarke: Mr. President, the Committee of the Whole has been in session, has had under consideration the article on judiciary, report progress and ask leave to sit again.

The President: The Chairman of the Committee of the Whole reports that they had under consideration the article on judiciary. The Committee reports progress and asks for leave to sit again. If there be no objection, leave will be granted.

Mr. Burleigh of Custer: I move that the Convention do now take a rest until two o'clock.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer (Mr. Burleigh), the same was declared carried and the Convention took a rest until two o'clock P. M.

Wednesday, July 24, 1889.

Afternoon Session

The Convention was called to order by the President at 2 P. M.

The Clerk called the roll

Mr. Burleigh of Custer: Mr. President, I move that the Convention do now resolve itself into Committee of the Whole and resume the consideration of the report of the judiciary committee.

The motion was seconded.

Mr. A. F. Burns of Lewis & Clarke: I would like leave of absence until to-morrow evening.

The President: If there be no objection, the gentleman from Lewis & Clarke will be excused until to-morrow evening.

Mr. Hartman of Gallatin: I would call the attention of the Convention to the fact that there is a special order for two o'clock.

Mr. Maginnis of Lewis & Clarke: I would suggest that the special order be postponed. I think it would be better to dispose of these various subjects while the attention and interest of the Convention is upon them. The action of the Convention in going into Committee of the Whole on the judiciary would simply postpone the special order.

The Chair put the question on the motion of the gentleman from Custer (Mr. Burleigh) and the same was declared carried.

The President: Will the gentleman from Lewis & Clarke, Mr. Maginnis, kindly resume the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Maginnis of Lewis & Clarke, in the Chair.

The Committe was called to order.

The Chairman: The motion before the house is on the substitute offered by the gentleman from Cascade (Mr. Collins) The Clerk will read the substitute.

The Clerk read as follows:

Substitute for Section 13. "Until otherwise provided by law, each organized county in the state shall constitute a separate judicial district."

Mr. Burleigh of Custer: Mr. Chairman, I happen to have the honor to be placed on the judiciary committee, and I concur fully in the statement of the worthy chairman of that Committee that the recommendation of the Committee in regard to the division of the districts was regarded rather as a suggestion than as a positive recommendation to the Convention for its consideration. While I confess that I was partial, and am still partial, to the system of making each county an independent judicial district, and believe it would be in the interest of economy, I did not come to this Convention for the purpose of setting up my own ideas or my own will against that of the majority of the Convention. What I want, and always have wanted of this Convention, is that it should calmly and deliberately determine upon one thing which I am set upon, and I am willing to let all subordinate questions yield to that paramount principle, and that is that we have a government of the people, a government for the people, and a government by the people; a government which shall secure the greatest amount of protection to life, liberty and property, and guarantee the greatest measure of happiness to the people. If I get that, I will be satisfied. I have no idea that there is a gentleman upon the floor of this Convention who differs with me in regard to this abstract proposition, but there will be a difference of opinion in regard to the necessary measures to carry it into effect. I have advocated the creation of each separate county into a judicial district from the fact that I thought it would be a great step in the direction of economy over the present system of territorial government; but as has been suggested by my friend from Meagher county, and by the worthy chairman of the judiciary committee, it may be that we can go a step farther. The first object of a judiciary at all is to provide for the adjustment, the settlement of all matters of litigation. I think that principle should be held closely in mind by every member of the convention. We want to provide a system that will give us a speedy and an adequate remedy at law in our courts of justice, and nothing should be allowed to interfere with that. Now, I am told, in some of the counties of this territory—I wont vouch for it, but I give the information as I get it—I will take Missoula county for instance—that there has not been a civil case tried there for over a year or two, and there are two or three hundred cases on the docket. Missoula county is connected with several other counties in the administration of justice. I am told that in Silver Bow County it is the same. I presume it is in consequence of the great amount of criminal business that the court has to attend to. I am also informed that in some of these other counties whose dockets are overloaded with civil business, that there have been no civil cases of any kind tried. Now if this be so, it is a strong argument in favor of dividing our districts in such a way that a speedy adjudication of the matters in controversy in our courts will be assured. I know that in our county there are some twenty cases on the docket that have been held there since

1883. I do not say it is the fault of the judiciary in all cases, because I can cite instances where the parties have not been ready to proceed with the trial. We have had five or six judges since those cases have been put on the docket, and it is fair to presume that these gentlemen who have been sent here by the government to dispense justice to the "benighted inhabitants of Montana' have not been fishing or playing "seven-up" behind a hay stack as has been suggested here, I believe they are as honest men as were ever sent into any country. Of course, we will have a constant immigration of lawyers as well as other people into this country It reminds me of the man who said, I think we will have a better condition of things because ranch eggs are coming in. Of course, I can pretend that they will be superior in point of legal ability. Now, if eight districts are sufficient and eight judges sufficient to transact the business of the district courts here and bring our record up to the present time and wipe off the docket all these old cases, that is all I want. I do not want men appointed to office here who are to go off nine months in the year and become demoralized by having nothing to do. I take it, there is no honorable member of the profession who would do that, and I do not think there is any danger of them becoming demented by not having to take care of business. I take it that men who are on the bench find enough to do in looking up authorities and studying over their decisions. so as to relieve as far as possible the docket of the supreme court of the territory. If the measure which I have been partial to does not meet with the approval of the majority of this Convention, I will most certainly second and support the measure of my friend from Meagher county (Dr. Parberry). We will leave it in the hands of the legislature and if the legislature finds that eight judges cannot do the business, they shall have the power to increase those judges. Now, these are my views stated fairly and squarely, and so far as the popular clamor of the people is concerned, I care nothing about it. My constituents sent me here not at my request, not at my own bidding, to do what I thought was right, and I will do my duty after my own measure and according to my own conscience, and I will undertake to be responsible to them. I hope the matter will receive the deliberate consideration of the Convention, and that we will not provide one more district or one more judge than is absolutely necessary for the full and faithful administration of justice in the districts of this territory

The question was called for.

The Chair put the question on the motion of the gentleman from Cascade (Mr. Collins) and the same was declared lost.

The Chairman: The next amendment is the amendment of the gentleman from Park (Mr. Joy) to strike out of the fifth line "and Yellowstone county" and re-number the subsequent districts.

The Chair put the question on the amendment of the gentleman from Park (Mr. Joy) and the same was declared lost.

The Chairman: The next proposition before the Convention is the proposition of the gentleman from Meagher county (Dr. Parberry) for which the gentleman from Silver Bow (Mr. Clark) offers a substitute. The gentleman from Yellowstone (Mr. Goddard) also offers a substitute. I suppose they should be read together.

Mr. Bickford of Missoula: Mr. Chairman, speaking for my own county and speaking with a partial knowledge at least of the needs of Missoula county, I will say with reference to the amendment offered by the gentleman from Meagher county, that it seems to fit the wants and necessities of our section better than any other. We have a county which if joined with Deer Lodge would make a judicial district having a larger number of inhabitants, a larger amount of taxable property and a larger volume of legal business than any other district in the territory. It is impossible, or at least impracticable for our county to be joined with Jefferson in a judicial district. We are situated on the western extremity of the territory in a place where it is almost impossible for us to be joined to any other county for judicial purposes, except it be to Deer Lodge. I am reliably informed by the representatives from Deer Lodge county that they have a sufficient volume of judicial business to engage the attention of Deer Lodge county. I think, taking into consideration the present condition of our docket, that by the time the judge would catch up with the business now upon the docket, that the growth of Missoula county would warrant us in asking for a separate judicial district; and inasmuch as it is in the contemplation of this constitution that the legislature shall have authority to enlarge the number of districts or change the boundaries thereof, it seems to me it would be the part of wisdom at this time to ask that Missoula county be made a separate judicial district. This I believe, is the position taken by the gentleman from Meagher county, and I certainly desire at this time to support the amendment offered by him; and I support it not because I think in time perhaps every county in the territory will not be a judicial district, because I believe with the growth of our population, with the growth of business, it will become necessary in time to have a judicial district for each county in the state. I am also told by one of the members of our board of county commissioners who is a member of this body, that during the past year in Missoula county it cost the county in the neighborhood of $6000. to pay the board of prisoners in the county jail. If this is true, we can save at least the amount that would be allowed a district judge, in that item alone, by having a speedy trial of these cases that are delayed from time to time in the courts of the county. I believe that so far as Missoula county is concerned, it will be a measure of economy, and it would be the part of wisdom to make it a separate judicial district.

Mr. Clark of Silver Bow: I would like to ask the gentleman what the condition of the docket is in this county.

Mr. Bickford of Missoula: I am not prepared to say. I know that there are a great many civil cases on the docket, and there are at this time in the county jail twenty or twenty five prisoners charged with felony. These men are there at the expense of the county at the present time.

Mr. Clark, of Silver Bow: I would like to hear the substitute of the gentleman from Meagher read.

The Clerk read the same.

Mr. Clark of Silver Bow: Mr. Chairman, when I offered my amendment, I had not heard this read. I therefore withdraw my own amendment as this suits me better.

The Chairman: That will reduce the propositions before the Convention to two.

Mr. Goddard of Yellowstone: I beg to say that my motion embodies almost the same proposition as that of the gentleman from Meagher county (Dr. Parberry). I am willing that the proposition which I presented joining Missoula and Deer Lodge counties shall be amended so that those two counties shall be separated and that each of them shall have a judicial district; and if the amendment of the gentleman from Meagher contemplates that, I will withdraw my amendment.

The Chairman: The Committee will vote upon the proposition offered by the gentleman from Meagher county (Dr. Parberry).

Mr. Joyce of Jefferson: As I understand that proposition, it includes the county of Jefferson in one of these districts.

The Clerk read the proposition for the information of the gentleman.

Mr. Joyce of Jefferson: Mr. Chairman, I am opposed to the substitute which is offered by the gentleman from Meagher because in the first place, I believe the county of Jefferson is entitled to have a district judge; that it is just as much entitled to have this district judge as any other of the districts which have been substituted in that report. The county of Jefferson is now the fifth county of the territory in population, according to the last vote, according to the vote of the election last fall, and it really has a much larger population than is shown by that vote. But leaving that out of consideration, the county of Jefferson has a taxable property greater now than the county of Missoula. We will have before this year is ended $500,000 or $600,000 more of assessable property from the railroads that are now being built in the county. I think that the county will be abundantly able to support a district judge, and not only able to support a district judge, but I believe it will save the people of that county evpense in having a district by themselves. It seems that a great many people look upon Jefferson county as one of the smaller counties of the State, but it is now about the fourth county in population and about the fourth county in wealth in the Territory, and I think that when we do away with the probate courts of this territory, we should give to the county of Jefferson a judge. I had an idea that when we assembed here, it was for the purpose of establishing a better government than that under which we now live, and I also supposed that the purpose of establishing courts of justice was to administer justice, and not to save expense to the people. Of course, we should be as economical as possible in adopting the system of courts, but there are other matters to be considered besides the mere cost of administering justice. We have been now for sometime in Jefferson county in a district composed of three couties. We have never had in that county any justice. I have lived there for over two years and a half. There have been six terms of court in that county since I have been there. They have never been able to try any civil causes in that county. Now, I believe that the object of establishing a court of justice is to give a guilty man who is charged with a crime a speedy trial and conviction, and not to keep him in jail at the expense of the county, and to give to an innocent man who is charged with a crime, a speedy trial ad an acquittal. Neither of these things can be had now in that county as it has been, and as it is at present, under the present judicial system. I believe, moreover, that when a man has a civil right that has been injured, that he should have a speedy redress for the injury that has been done him We have never had there any redress at all. There has only been in the last eight years, as I have been informed, one term of court in the county where there have been any civil cases tried to amount to anything At the last term of court, we had a three weeks term. The whole of that time was taken up in the trial of criminal causes. There were then on the docket civil cases which would have taken, according to my computation, at the least six weeks, and as I have been informed by other gentlemen, even longer than that, say two months or ten weeks. Those cases were not touched at all; we simply tried the criminal cases on the docket at that time Now, I believe that the litigants in that county have a right to have their cases tried. and I believe we should not only consider the expense to the county but we should consider the rights of people who have cases in the district court; and I do not believe that if this system is adopted here which puts Jefferson, Madison and Beaverhead counties into one district, that we will be any better off than we have been under the present system. If we have got to pay for our district courts, then I want a court that will administer justice, and we cannot get it under the present system; and I do not believe that we can get it if you put those three counties into one district. We are now in a district which has three counties. That district has one district court and three probate courts. We cannot now—I speak only so far as my own county is concerned, with which I am perfectly familiar—we cannot get any justice in that county. Now, I say if you are going to abolish these courts and place us in a district where we will have only one court to take the place of four courts, that we will be still worse off; and if we are not going to be any better off than we are now, then I prefer remaining as a territory and have Uncle Sam pay for our justice such as we get. That will be about the effect of the arrangement proposed by the gentleman from Meagher county. I believe that this system which has been proposed here by the judiciary committee will be a satisfactory system to the people of this new State and I believe if we have one judge in the county of Jefferson that we will save expense to the people of that county. The argumnts which have been used before the judiciary committee and before the Bar Association which passed upon this same question here last week were that by having a system similar to this system of Superior Courts, as it is called in California, or which we call District Courts, and which is the same system practically that has been in operation in Pennsylvania for the last one hundred years, that we would have a speedy remedy to right our wrongs; that we would save expense to the counties by adopting that system as well as save expense to civil litigants that have cases before that court. I did not come here favorably impressed with that system. I believed in having about six district judges and the probate judges; but after hearing the arguments—and they were arguments, some of which were made by gentlemen who have got up here today and seemed to be in favor of reducing still further the districts which have been reported by this Committee—after hearing their arugments in favor of this so-called California system of giving to each county in this territory a judge, I felt that it would be the proper thing to do It seems to me, however, that it is the sentiment of this Committee of the Whole that would be too much; and it was the sense of the Judiciary Committee; but I believe that the system which they have reported here will be inexpensive and it will be the best system that we can adopt. A great many of the gentlemen who have spoken here seem to think that the object of a court of justice is to save people money. I do not think so. I think it is the object of a court to administer justice, and if we have got a system here that will administer justice at no greater expense than we can necessarily avoid, we should adopt that system. I am in favor of adopting the report of the Committee here especially as it refers to my county. I believe that we will save a great amount of expense. The gentlemen of this Convention do not seem to think that when we are creating as it is true, twelve district courts, that we are abolishing sixteen probate courts. We have now four district courts, and sixteen probate courts, making twenty courts. We propose now to organize simply twelve courts, that is, we are cutting off eight courts. Now the cost of those courts, if we had county courts, would amount to at least $30,000 and the balance of that $54,000 which these twelve courts would cost is no more than we would have to pay the district judges if we adopt a system of district judges and probate courts. Now, if we are going to abolish the probate courts, then I would not be in favor of adopting the system which has been proposed here by the gentleman from Meagher county. As I have said, under the present system, we cannot get any justice in our county. If you are going to abolish the probate courts, we will still be worse off than we are now; and if we cannot have a probate court in that county, we ought to have a district judge who can sit in that county. It would be economical and in the interest of justice. There are a great many cases coming up where a speedy remedy is necessary. For instance, injunctions, writs of habeas corpus, and other writs of that character. Under the present system if this plan is adopted as proposed by the gentleman from Meagher county, some of those counties in that district are going to suffer in the administration of justice. If we have a judge in Jefferson county, the other counties are going to suffer from it. They are going to go over to Jefferson county every time they want a writ of injunction or every time they want a writ of habeas corpus, and all that is going to cost a great deal of money. By having this system with a judge in Jefferson county, allowing the other two counties to make the other district we would save that expense. I believe, further, that that system would save a great deal of expense in criminal cases. There are a great many cases that come up in the justice and probate courts where a man upon some charge of misdemeanor is convicted. He has a jury trial which the county has to pay for, and they have to pay the costs of the witnesses which he produces. In nearly every case in my county where a man is convicted in a case of that kind, he takes an appeal to the district court. That case all comes up again. The consequence is that the county has to pay the cost of trying that criminal case twice. There are two sets of jurors and two sets of witnesses, and it would only take two or three cases like that in a year to more than pay the difference between the judge's salary such as they would have to pay as a county by themselves, and the salary they would have to pay a judge in connection with these other two districts. When we come into this new State, I would like to see a better government. I know that the administration of justice in our county has been defective; that we have not had a court there in my recollection—and as I have said before, in the last eight years, as I have been informed by lawyers who practiced there before--we have not had a court there which would try the civil cases at all. Now, I believe that those people are entitled to some rights. I believe that when a man is wronged, he is entitled to have that wrong redressed, and I do not see how we can do it under the system proposed by the gentleman from Meagher county. I believe we are just as much entitled to have a judge in Jefferson county as in Missoula or any other county in this Territory, because every man is entitled to have justice, and we cannot get justice under the system which is proposed.

Mr. Joy, of Park: Mr. Chairman, I am in perfect accord with the gentleman who has last spoken upon this proposition, and I want also to endorse the statements of the gentleman from Custer (Mr. Burleigh) and the gentleman from Deer Lodge (Mr. Whitehill). Now, it is not a question, and for that matter I do not think that any gentleman on this floor, up to this date, has any reason or room to boast to his constituents about what he has accomplished here and it does not look now as though he was going to have. Now, I am not particular as to what county the county of Park shall be attached, but I am anxious that some arrangement may be entered into by which we can clear up our dockets every term and that justice may be administered under our constitution without denial or delay. The gentleman from Yellowstone (Mr. Goddard) has suggested that we be attached to the Crow Indian Reservation. The gentleman from Yellowstone knows more about the Crow Indian Reservation than I do, and in view of the fact that he and his people for many years have been joined to the Crow Indian Reservation for all other purposes I expect they might just as well stand that racket for judicial purposes.

Now, Mr. Chairman, it has been suggested here that in all of these counties they never have a term longer than two weeks. I want this Committee to understand that we have never had a term of court for more than two or three weeks at a time, so that our civil cases have been accumulating from time to time until now we have about sixty cases on the docket, and I have been also informed by the judge who presides upon that bench, since I have been engaged here upon this floor, that at the coming term which meets there in September, a notice has been served upon us in advance that nothing but criminal cases will be disposed of at that term. Now, I say, connect Park with any county that you please so that you provide for a system whereby we can clean up all of our civil business, so that we may not be holding over from year to year. I think it is a safe statement for me to make that I have four or five clients now with important cases upon the docket who would almost be willing of themselves to contribute enough to pay a year's salary to a judge if they could only have those cases tried and determined at once; it has already cost them the price of this year's crops; and if the proposition is to put the same number of counties or nearly that number in each district—nearly as many as we have now—we will be no better off. I want to call the attention of this committee to one fact that has not been referred to yet, that if we abolish the probate system we will be worse off, as my friend from Jefferson suggested, than we are now. That probate court is established with certain civil and criminal jurisdiction, something that goes beyond the jurisdiction of a justice court. Now, if we are only to have a justice and a district court, it will work a hardship. A person brought up for a misdemeanor which is punishable by imprisonment for more than ninety days is beyond the jurisdiction of a justice court and that man will have to go to jail and lie there three or four months until the district court meets, and then his case will be heard and determined. and he will serve out his imprisonment after that. It is a hardship in that respect, and it is a hardship upon every citizen of the county, because they will during all that time have to pay the expense of keeping these prisoners in jail. Then there is the intermediate jurisdiction of the probate court of $500, which will be done away with and I say our district courts will be more than overcrowded. There will be nearly double the business, and I am satisfied that under the arrangement contemplated by this amendment, the condition of our docket will remain as it is now and it will take from a year and a half to two years to dispose of the civil business The expense of the probate court this year in Park county is $2,800. It is proposed to pay the district judge $3,000. Now, that alone would not amount to anything to the people of Park county, and I am in favor, Mr. Chairman, if the probate court is to be done away with, I am in favor of engrafting here in this constitution that the various counties shall pay for their own court, and that no part shall be paid by the state. Let the counties pay for their courts. I say that when gentlemen come up here and state the condition of their affairs and show conclusively that they need more judges and more terms of court, that this Convention ought to be willing to give it to them. Park county does not ask that the State shall pay half of the expense of her court; we are willing to pay for the administration of justice; we only want arrangements made by which we shall have that justice. I am in favor of making that amendment, that each county shall pay for its own judge.

The Chairman: The gentleman from Silver Bow offers a substitute to the pending amendment which the Clerk will read.

The Clerk read as follows:

Substitute for Section 13.

Mr. Middleton, of Custer: Mr. Chairman I regret very sincerely that I was not present this forenoon to hear the discussion upon this question, but from what I have heard this afternoon, there seems to be an inclination in favor of having a judge in every county. Now, I believe that if that matter is fairly considered it will become perfectly apparent to everyone that that number of judges is not required and I will support the amendment as offered by the gentleman from Meagher county which provides for eight judicial districts with a judge for each district. I believe that that number of judges can do all the work that is to be done. If we take into consideration the fact that heretofore we have had but four judges who have been required to hold two terms of the Supreme Court a year which have taken at least two months in the year, in addition to their regular duties as district judges and that by this proposition we double the number of district judges, and that they have nothing to do with the work in the Supreme Court, but that each judge attends to the duties in his own district the year round, I believe that notwithstanding the fact that the probate courts are to be abolished and the work of those courts thrown into the district courts, that every bit of it can be done by eight judges in the state. Now, the argument of the gentleman from Jefferson that they have not had a civil case tried for the last eight years, and his further argument that it will take six or seven weeks to do away with the accumulation of eight years' business is to me the strongest kind of indication that that county does not need a judge. His own argument is conclusive. If a judge can dispose of the work in that county, the accumulation of eight years, in six or seven or eight weeks, I submit there is no good reason and it is no good argument why there should be a judge in that county. Now, so far as the business in the eastern part of the territory is concerned, I am satisfied that one man can perform all of this work in Dawson, Custer and Yellowstone counties. I am not able to speak from a knowledge of the condition of things so well as to the other counties. I believe we should have a sufficient number of judges to do all the work and to do it as speedily as possible. The argument of the gentleman from Park that it will save a large amount of costs that are now required in keeping persons in jail, and for witnesses, and that sort of thing, does not obtain for this reason, that we propose to have four terms of court in each county. Those persons would have to be held if there was a judge for every county because in the districts where a county composes a district, there is simply provision for four terms of court in that county. Now, if we shall provide that there shall be three counties in one district, that judge shall be compelled to hold twelve terms of court, but as the business will be much less than it is in this county or in Silver Bow county, he can certainly readily attend to it. Now, the probate business, that is, strictly speaking, probate matters that would have to be performed by the judges, is not going to take any great amount of time. Most of the work in the probate courts of estates and matters of that kind, is done by the clerk anyway, and I believe that on the first two or three or four days of each term of court all the probate business there is can be disposed of in the district court; that there can be a two or three weeks term four times a year in each county, and that in less than twelve months the docket of the district court of every county in this State will be cleaned up. Now, it is a matter that I do not believe individual counties should be permitted to have their entire say in, or that this Convention should be controlled by the wishes of any particular county, for the reason that it is proposed that the State shall pay one-half of the expense of these judges;—and I think that is right because the criminal business in each and every of these counties is fully one-half of what business is done, and criminal business is State business and should be paid for by the State. So if it is to be paid for by the State, then unless the representative or representatives from a certain county can show that their condition of affairs is such as was indicated by the gentleman from Missoula, that they actually need a judge to do the work there—and from his statement I believe they do—and this amendment of the gentleman from Meagher I understand makes that a separate district —unless the members from those counties can show that there is sufficient business to warrant having a judge for the county the year round, I do not believe that they should be allowed to have them. I believe the eight judges can perform the work there is for the present, and if in two years from now the legislature deem it necessary to increase that number, it certainly can be done.

Mr. Joyes, of Jefferson: I only wish to allude to one remark of the gentleman from Custer. He says that in the discussion of this question by me that the fact that I stated here that there were six or eight weeks' business on the docket after all this time shows that we do not need a judge in Jefferson county. Now, these cases which are on the docket now in Jefferson county are nearly all new cases, the old cases have not been tried. they have simply been dismissed and settled up without coming to any proper adjudication because they could not be brought to trial. Every time some man jumps the mining claim of another and a suit is brought, the man that owns the claim, even if the other man has got no possible show of ever winning the case, has got to pay the jumper, and has to encourage blackmail and robbery in order to get justice. He cannot bring his case up and try it. He knows that if he brings his case before the district court it will be put off from time to time and from year to year, and all that he can do is to pay this robber and get his case dismissed and his title quieted so that he can dispose of his property and do something with it. And these cases that are now on the docket are cases, nearly all of them, which have come up within the last year These old cases that have been accumulating for years have been settled up in some manner unsatisfactory to all the parties and disposed of, and I do not believe that this same system which is proposed by the gentleman from Meagher will give us any better justice than we have been having in the past. I believe that if it is the sense of this Convention that Jefferson county ought not to have a judge—I think it ought to have, and that it is just as much entitled to one as these other counties—but if this Convention thinks it is not entitled to one, then I think some other arrangement should be proposed besides that mapped out by the gentleman from Meagher. I believe that would be unsatisfactory to the people of our county; that it will cost them more, and that they will not have any more chances for getting redress for wrongs than they have now. The business has been increasing all the time within the last two or three years, and the business there now would warrant having a judge there all the year, in my opinion.

Mr Clark, of Silver Bow: I do not desire to take up the time of this Committee and shall not do so for any great length of time. I simply wish to make an observation with reference to the amendment which I have offered to section 13. This districting of the state of Montana into judicial districts is a question of the utmost importance. The main object to be had in view, and to be held in view, is not the question so much of expense, but, as has been properly suggested by some of the gentlemen present, to secure an efficient and speedy administration of justice; and this is the object which should govern every one of us in deciding this question here today. Now, the gentleman from Missoula objects to coupling that county with any other county in a judicial district Upon listening to the reasons adduced by that gentleman, I was willing to withdraw my motion which coupled Missoula county with Jefferson county, and I am willing so far as I am concerned—and I believe it will meet the views of my constituents—that every county in this State shall have a judicial district, if it shall be deemed necessary to secure a speedy and efficient administration of justice; and I am also willing so far as I am convinced by the evidence that has been adduced here by these gentlemen from these different counties to accede to their demands and wishes whenever I believe they are correct. I do not believe it is necessary to give every county in this State a separate judicial district, but I would say that if the county of Missoula is entitled to a separate district, I believe that to couple three counties together, for instance, Jefferson, Madison and Beaverhead, as has been proposed, would be to make the districts entirely disproportionate. I am convinced from what I have heard from the lips of the gentleman from Jefferson, and from my experience in these matters, that he is correct, and that to couple these three counties together would work an injustice to all of them We have heard it stated that it has been impossible to secure justice in the county of Jefferson, and I believe the gentleman to be correct when he says that the people of his county will be still subject to injustice if they are coupled with two other counties. Now, I have looked this matter over carefully, and I have drawn up an amendment which couples not more than two counties together, leaving the larger counties to constitute a single judicial district, and I believe that the object which we are all seeking will be accomplished. If it shall be found in a year hence that these districts are not sufficient, it is within the power and the jurisdiction of the legislature to create other districts.

Mr. Cardwell, of Jefferson: I do not desire to take up the time of the committee, but I do say that I heartily support the substitute offered by the gentleman from Meagher county (Dr. Parberry). I do not think that Jefferson county requires a separate judicial district. I hope to see the substitute offered by Dr. Parberry passed on any other substitute that is in the shape of economy.

Mr. Meyers, of Yellowstone: I desire to say one word, that is, that under this substitute of the gentleman from Meagher county, it seems to me that justice can be fully distributed in these various districts, and I will add that if it becomes necessary to form another judicial district, that the Legislature meets almost immediately after the adoption of this constitution, and if it is demonstrated that it is necessary they should have another district, then it will be very easy for the citizens of Jefferson county to secure a separate court. When we come to make up the estimates for running the state government per annum, we find that it will take about $320,000 to run the state government. The judicial system will consume about one-seventh or one-eighth of that amount, under this resolution if adopted. We find that the taxable property from the best information obtainable for the present year will probably reach eighty millions of dollars within the state. The Financial Committee will recommend that the taxes levied by the State shall not exceed three mills on the dollar which would produce a revenue of two hundred and forty thousand dollars. The balance of about eighty thousand dollars to keep the State running for one year would have to be made up from licenses and other sources. Now, it seems to me that we ought to start off from the bottom round of the ladder, start a judicial system at the very least, with the fewest number of judges that we can possibly get along with and conduct the business of the State properly; and if after an experience of one or two years, we find that we can increase the number, then we can proceed to increase them. Let us not start off at the top of the ladder and descend. Hence, I think, that the resolution of the gentleman from Meagher (Dr. Parberry) is nearer the right point to start at than any other that has been introduced, and that it would be wise on the part of this Convention to adopt that resolution and make that as a beginning. If we want to advance afterwards, why, we can create new districts, and even, if necessary, give each county a court.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Clark) and a vote being had, the same was declared lost.

The Chairman: The question is now on the substitute of the gentleman from Meagher (Dr. Parberry), which the Clerk will read.

The Clerk read the said substitute for the information of the Committee.

Mr. Whitehill, of Deer Lodge: I offer an amendment to that section, that Jefferson county be added to the schedule proposed by the gentleman from Meagher (Dr. Parberry) as a separate district to be known as number 9.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Deer Lodge (Mr. Whitehill), and a vote being had, the same was declared lost.

The Chairman: The question now recurs upon the substitute of the gentleman from Meagher (Dr. Parberry).

The Chair put the question on the said substitute of the gentleman from Meagher (Dr. Parberry), and the same was declared carried.

Mr. Robinson, of Deer Lodge: I desire to amend by making Deer Lodge the second judicial district and Silver Bow the third. It is a matter of no importance to the other counties, but I do that for the reason that ever since the territory has been organized that has been the second judicial district, and as a matter of the name and tradition, I desire to have the name retained.

Mr. Burleigh, of Custer: I would suggest to my friend from Deer Lodge that under this constitution, the language of the Scripture applies, "All old things have passed away and behold all things have become anew.' (Laughter)

The motion of the gentleman from Deer Lodge was seconded.

The Chair stated the motion.

Mr. Warren of Silver Bow: I hope this motion will not prevail. Silver Bow county has always been in the second judicial district ever since the county was created, and it was the first county seat of what is now Deer Lodge county; and if either one of the counties is entitled to the distinction, I think it is Silver Bow county.

The Chair put the question on the motion of the gentleman from Deer Lodge (Mr. Robinson) and a vote being had, the same was declared lost.

Mr. Whitehill of Deer Lodge sent up an amendment which the Clerk read as follows: Amend Section 15 by striking out of line 1 the words "writs of error" at the beginning of the section and after the word "the" and before the word "decisions," insert "judgments, decrees and."

Mr. Whitehill of Deer Lodge moved the adoption of the amendment.

The motion was seconded.

Mr. Whitehill, of Deer Lodge: Mr. Chairman, those words "writs of error" under our practice, are now obsolete, and under all the systems where the code practice is in vogue, there is no such thing known now as writs of error. The words have crept in there, I think, without proper consideration by the judiciary committee., The Committee took the old constitution, which was virtually taken from the Colorado reports. There they had writs of error, but in California, in New York and in this Territory, and in all the Territories that have code practice similar to ours, there is not such a thing known as writs of error. I ask any attorney in Montana if he could now under our practice code, get into the Supreme Court of this Territory by means of a writ of error? You might as well have added to Section 22 or Section 23 "Writs of error and appeals shall be allowed from justice courts" as to have a writ of error from our district courts now under our practice. Formerly, where common law practice and equity practice were separated, writs of error were taken upon questions of common law and appeals on questions of equity. Now in the sections which we have adopted and recommended, you will observe in Section 28 that there is a clause which provides that there shall be but one form of civil action and law and equity may be administered in the same case. Now, we have provided that there shall be but one form of action, and that both of those systems are incorporated in one; and under our practice we have to get into the Supreme Court by appeals and not by writs of error; so that under our law, and under all the code laws, this writ of error is not a correct term and I will ask any attorney in this convention again, if it would be possible for him to get into the Supreme court by a writ of error. So I say that that word writ of error should be stricken out and the words "decrees and decisions" inserted. These are the words that are used in the New York practice for providing for the review of cases in the Supreme court on appeal. There may be some attorneys that will argue that the words "decisions" covers it all, but I do not think so and so I have amended it to conform to the practice.

Mr. J. K. Toole, of Lewis & Clarke: In the absence of the chairman of the judiciary committee, I simply desire to make one observation. The argument of the gentleman from Deer Lodge evidently proceeds upon the theory that the practice which now obtains in this Territory will ultimately obtain in the State. The last legislative assembly of this Territory provided for a Code Commission charged with the duty and responsibility of reporting to the first legislative assembly of the state of Montana a code. I do not know and cannot tell what kind of a code may be presented by the Code Commission, or what the legislative assembly of the state will adopt, but certain it is, however, that if they do not provide for taking cases to the supreme court by a writ of error, those words cannot possibly do any harm in the constitution. If they remain there, it will be within the province of the legislative assembly to provide that method of getting cases into the supreme court of the state. If they are stricken out, it will be impossible to do so. It strikes me as a member of the judiciary committee, in the absence of the Chairman, that the words ought to remain there. They cannot possibly do any harm.

The Chair put the question on the motion of the gentleman from Deer Lodge (Mr. Whitehill) and a vote being taken, the same was declared lost.

Mr. Whitehill, of Deer Lodge: I move to amend Section 23, so that it will read "Writs of errors and appeals shall be allowed, &c."

The motion was seconded.

The Chair stated the motion.

Mr. Whitehill, of Deer Lodge: Now, Mr. President, if it is proper that those words should be in the other section because we do not know what the Code Commission is going to do, I say it is proper that they should be added here, "writs of error and appeals shall be allowed from justice courts," because we know no more about what this Code Commission will do about justice courts than about district courts, and to be consistent, I move those words should be inserted.

Mr. J. K. Toole, of Lewis & Clarke: I would like to inquire of my friend if he ever knew a code in any State of the Union, or any system of practice which authorized a writ of error from a justice court.

Mr. Whitehill, of Deer Lodge: I say that under the other section that there is no such thing known in Montana as writs of error, and I am sure that the California system will be adopted by us, and if so, it introduces an obsolete word in the wording of the section, and has just as much force here as it has in the other section.

The Chair put the question on the motion of the gentleman from Deer Lodge (Mr. Whitehill) and a vote being taken the same was declared lost.

Mr. Middleton of Custer: I desire to offer an amendment to Section 29.

The Chairman: The gentleman from Custer (Mr. Middleton) offers the following amendment. Strike out of Section 29 all of section after line 10 and insert the following: "$4000 per annum each." To which the following amendment is now offered.

The Clerk read as follows: Amend Section 29 of article on judiciary as follows: Strike out all of that part of said section after the word "each" in the 10th line, and insert in lieu thereof the following: "Until otherwise provided by law, the salaries of the several district judges shall be $4000 each per annum." Offered by Mr. Goddard of Yellowstone.

Said motions were both seconded.

Mr. Burleigh, of Custer: I offer an amendment to Section 29.

Mr. Middleton, of Custer: The only difference I can see between the two amendments, is that one reads "per annum each," and the other reads "each per annum."

The Chair put the question on the motion of the gentleman from Yellowstone (Mr. Goddard) and a vote being taken the same was declared lost.

Mr. Collins of Cascade sent up an amendment.

The Clerk re-read the amendment offered by the gentleman from Custer (Mr. Middleton) as follows: Strike out of Section 29 all of section after line 10 and insert the following "$4000 per annum each."

Mr. Rickards of Silver Bow: I do not think that if we adopt this amendment, it will make that section intelligible.

The Chair put the question on the motion of the gentleman from Custer (Mr. Middleton) and the same was declared carried.

The Chairman: There is another amendment pending which the Clerk will read.

The Clerk read as follows: I move to amend by striking out "$4000" and insert "$3500." Offered by Mr. Collins of Cascade.

The motion was seconded.

Mr. Parberry, of Meagher: I would like to ask if that would include mileage?

The Chairman: It is not apparent on the face of the amendment.

Mr. Carpenter, of Lewis & Clarke: The inquiry has just been made as to whether these salaries were intended to cover mileage. I think that is an important question to be settled because, possibly, if mileage might not be allowed, the salary might in some cases be considered small; if mileage were allowed, it might in some cases be very large because the mileage received without much outgo of money might be very large. Therefore, I think the question of mileage ought to be settled here while the salaries are being fixed. The next section says, "No officr shall receive any compensation for or on account of his office except the salary provided by law." That might or might not he held to cover mileage, but in this age of public conveyances and public conveniences for traveling—the age of passes, &c.—I think this question ought to be settled when we fix the amount of salaries to be paid so that we can vote intelligently with reference to the compensation. A judge might receive $5000 and his mileage in fact might bring it up to $6000; or if he did not have mileage it might reduce it $500 or so, and for the purpose of passing upon that question, if an amendment is in order, I will offer one.

The Chairman The gentleman's amendment is not in order at this time

Mr. Burleigh, of Custer: Mr. Chairman, I think there is another question that lies back of the wise suggestion of my friend from Lewis & Clarke county, and that is whether he makes the suggestion as to mileage with the view that it is possible that these generous railroad corporations may furnish all the judges with passes and whether they are to credit them up to the State or not. If not, why, there should certainly be some provision made for their actual traveling expenses, to say the least.

Mr. Clark, of Silver Bow: I hope the amendment offered by the gentleman from Cascade will not prevail. Now, $3500, as proposed by his amendment, is not sufficient compensation and will not induce a competent judge to run for that office. I do not believe that any district in this State will be able to procure a competent judge even for $4000 Now, there is no economy in cutting down the wages or salary of the man who occupies so important a position as judge of a district court. It is very important, on the other hand, that we get the most efficient and competent lawyers in the territory to accept those positions. The days of "carpet-bag" rule will be forever abandoned, and while we have had some of the most excellent gentlemen here under territorial administration we know that we cannot get competent native talent, as a rule, to accept these positions Heretofore, we have had to accept those that were sent out here by the different administrations at Washington, because lawyers do not get such fees in the East—the cost of living is less—and a man will come out here and accept a position from the State that would be refused by our local lawyers. I am in favor of putting good lawyers into these positions, men who are competent and men who are efficient; men who have excellent ability and who will perform the duties of their office in a capable and prompt manner. We know very well that a judge may delay the business of a court to such an extent, even in one session as to absorb several times the amount of his salary. We have a State here with a capital of over a hundred millions of dollars, and I protest against the state of Montana offering to put men upon the benches of this state and pay them the paltry sum of $3500. I believe in economy, I believe in retrenchment wherever we can retrench and save the expenditure of money in every way possible; but I believe it is a mistaken policy; I believe that it would be penny-wise and pound-foolish to attempt to select men and induce them to take the bench in this state on that salary. Gentlemen who have been in business know full well that in order to get good help we are obliged to pay good wages, and it is impossible, in my opinion, to get lawyers in this Territory to accept those positions who are capable of administering the duties of that office, at the salary named or contemplated in the amendment of the gentleman from Cascade.

Mr. Robinson, of Deer Lodge: I do not take exactly the same view of it that the gentleman from Silver Bow does. In the first place I would like to have $5000 lawyers on the bench in the nisi prius courts. If the gentleman in his own business affairs has an important case to try he might find a lawyer to attend to it for $250, but he would not be likely to employ him but rather would employ one that he would have to pay $500 or a $1000 He has the selection; and if we could select in the same way so far as our judiciary is concerned, I would say Amen to it; I would say increase the salary above even $4000. If we can get $5000 men on the district bench it would pay the State of Montana to have $5000 men there instead of $2500 or $3000 men. But that is not the thing. We cannot select our judges on the same basis as you business gentlemen can employ your attorneys. We have in Montana Territory, and always have had on the bench in the first place $2600 men until about eight years ago Congress increased it to $3000 How many eminent gentlemen have there been in Montana in the last twenty years who have been willing to sacrifice themselves for $2600 and $3000 a year for those positions? Now, then, sir, if these gentlemen are willing to sacrifice themselves for that price, and some of them have been very competent and good men on the bnch, and so competent that they will in all human probability go upon the bench again—then if they are $3000 men we are going to get them for $4000. Those who go upon the Supreme bench will probably be men who have accepted these positions for $3000. If we can carry it out in practice as in theory I would be in favor of putting the salaries up to a price where we could secure the most competent men; but I am so well satisfied that we cannot do that, that I believe we would be giving a higher price than the men themselves would ask for those services—in other words, that we will get $3000 men for whom we will have to pay $4000. For that reason I support the amendment of the gentleman from Cascade. Not, sirs, but what I believe some of them would make less money than that, they can make no more because the salary on the bench of $2500 is equivalent to $4000 in practice, because a man's expenses will run up to that much. So, taking all these things into consideration, I am disposed to support the proposition of the gentleman from Cascade, not but what I believe in paying $4000 and even $5000 to men on the bench; it would pay to do so—it would pay to have men of that caliber as are judges on the nisi prius and Supreme benches; but if we can get them for less, then let us not pay more than they ask themselves.

Mr. Ramsdell of Missoula: I would like to see the gentleman carry his argument to its logical conclusion and introduce a resolution not to pay over $1000. I am satisfied we can get judges for $1000 if we have a mind to accept that kind of talent.

Mr. Collins, of Cascade: I think that an increase of $500 over the amount paid at present is entirely sufficient for the beginning of our expenses as a state. Now, if the gentleman from Silver Bow had the selection of the men to serve as the judges of the County courts and the Supreme courts, and had the power in him to compel those people whom he selected to serve, I would be heartily in favor of paying them $4000. $5000 or $6000. But we cannot get the material to serve in those positions. The lawyers who make salaries ranging from $10,000 to $20,000 a year will not take those positions even at $5000 or $6000, and we have found by past experience that gentlemen who are entirely able and capable of filling the positions will fill them with salaries running from $2600 to $3000. It seems to me if there is anything in this word economy that has been preached here, that here and now is the time to strike at the root of extravagance and begin at economy; and we can only do it by making the salaries of all of our officers not only judicial but all others, not low, but so reasonable that we will get the best talent obtainable for the positions.

Mr. Stapleton, of Silver Bow: This is a very important question and I hardly agree with some of the arguments advanced. I believe we will get exactly what we pay for in the way of judges, the same as in any other positions. I believe that we pay our money and take our choice. I believe, if we pay $3000 we will get $3000 men; if we pay $5000 we will get $5000 men. Now, take the gentleman from Deer Lodge. I know myself from what I have heard him say a great many times that if he gets a very small fee he takes a very small interest in the case. (Laughter) He neither does himself nor his client justice when he gets a very small fee. Now, Mr. Chairman, we work exactly upon the same principle. If you give him $4000 or $5000, he will take more pride in doing his work—more pride in filling that position—more cheerfulness, and he will feel that he is being paid for what he does. You give a man $4 a day and he will do more than a man to whom you give $3, and I believe the same rule will apply to the judges. I believe now that the best thing we can do for the people of Montana is to give $4000. I am in favor of more than that, but that appears to be the motion before the Convention, and I am in favor of decidedly of $4000, and I therefore hope the substitute of Mr. Collins will not prevail. The gentleman from Deer Lodge County maintains that we will get the same talent for $3000, as if we paid $4000. Now, then, Mr. Chairman, we will shut out a certain character of men, because they are $3000 and $4000 and $5000 men; when you pay $3000, you shut out all those who are not willing to work for that but there are men who work for that, and as my friend here says you can get men to work for $1000. You get the character of men you pay for. You can get men to fill these offices for $1000; I have no doubt about it at all. But we cannot afford to have poor judges. It is for the interest of everybody that we should have good judges It will prevent the accumulation of the Supreme court business if we have good nisi prius judges—men who study up their cases before deciding them, and by so doing avoiding unnecessary appeals to the Supreme Court. But if you get men who are incompetent or men who do not believe that they are sufficiently paid. the result will be that the Supreme court will be crowded with business just as it is in California, and the way to avoid that is to get good, competent nisi prius judges who will do the work well and who will satisfy everybody that their rulings are correct. As I said, that will cut off unnecessary appeals, and I hope the motion will not prevail.

Mr. Middleton of Custer: I just desire to say a word in reply to the gentleman from Cascade. It occurs to me that his argument in favor of economy is rather inconsistent in this, that he labored here strenuously to have a provision put into this constitution for a judge in every county making sixteen judges, The Judiciary Committee reported a judicial system with twelve judges. At twelve judges with a salary aggregating from $3000, up to $4000, as reported in the report of the Committee that cost to the state for the salaries of those judges would have been $41,500. Under the present system if the judges are paid $4000, each the entire amount of their salaries is $32,000. Now, I submit that that was one of my reasons for favoring the cutting down of the number of judges, so as to get good men to do the work and then increase the salary and put them all on an equal footing, so that there might be no gradation among the judges. I should think one district judge ought to stand on the very same footing with, every other district judge, and it appears to me that $4000, for such material as we ought to be able to put on the bench here is certainly very low compensation.

Mr. Burleigh of Custer: Mr. Chairman, one word in reply to the remarks of my illustrious and beloved friend Mr. Middleton, In advocating the necessity of able and efficient judges I agree with him fully, but he made one remark that horrified me and that was this—that judges like all other men would work for the pay they got, if a judge was paid a small salary he would shirk his duties—he would not do any more than he was paid for. Now, if we elect a judge we want an honest man, and it is perfectly abhorent to every sense of justice to think that a man who is elected to the district court who swears to do his duty to the fullest extent would purjure himself, I cannot believe any such thing.

Mr. Joyes of Jefferson: I merely desire to say in regard to the cost of these judges, that the gentleman from Custer says it would come to $41,000. According to my calculation it would amount to $39,500. Now, it is proposed to abolish three of these districts, or rather to provide only for nine instead of twelve and give then $4000 apiece after we have decided that in the interests of economy we have got to cut off these districts. Now, it is proposed to give the judges $4000, a piece and I do not see where the economy comes in; that will cost at nine judges $32,000. We only save then about $7,500, by striking off these other four districts. I do not think that that is economy. I believe the proposition of the gentleman from Cascade to pay them $3,500, is sufficiently liberal. I believe that if we are going to act here upon the principle that we should have an economical administration of justice, then we ought to adopt the proposition of the gentleman from Cascade and not the one of the gentleman from Silver Bow, that we pay them $4000. We are losing in efficiency and speediness in the administration of justice by adopting this system. Now, gentlemen here seem to have been very well satisfied with the system of district judges which we have had here for so many years. We have got able and learned judges for $3000 a year, who transacted the business not only of the district court but of the Supreme court of the state, and I do not see if that is so why that should not apply with equal force to this same proposition. If we can get good judges as they say they have done then I do not see why we cannot get a district judge that would be satisfactory for $3500, per year instead of paying him $4000. I think that we should not adopt this proposition to pay $4000, a year. We should adopt the proposition of the gentleman from Cascade to pay $3,500, per year, if we really mean it when we say we are reducing these districts from twelve to nine in the interest of economy.

Mr. Rickards of Silver Bow: Again I find myself compelled to disagree with my good friend Mr. Collins. Now, I think Mr. Clark sounded what may be said to be the key-note of the state government, and that is we want efficient men, and I believe if we need efficient men anywhere it is certainly on the bench—men who by reason of their legal ability and character and standing command respect, so that when a man goes into court he may feel that he will get justice. Now, it is too often the case in some of our lower courts, and any one who has had any experience will bear me out in the assertion, that we feel that it is just a toss up of a penny which way the case will go. We know that they are not competent to weigh the evidence, neither by experience nor education. Now, I believe in the matter of a district judge that certainly we should have the very best talent obtainable, and I believe if you place the salary at a living figure there will be men who will make some sacrifices to accept that office because it carries with it certainly a great deal of honor, and having come from the bench—stepped down from the bench—it gives men a certain standing and prestige in a community that they did not have before. But if you fix the salary as Mr. Collins proposes it seems to me you place it beneath the dignity of the best men in the legal profession. And right on this point I want to say that I have made up my mind so far as in my power to establish a schedule of salary for all of our state officers that will command men of ability and character. I believe it is economy to do so—as Mr. Clark well says economy in this direction as in every other avenue of life. And one other point I want to call your attention to; the matter needs no argument and I just simply want to call your attention to it We are fixing the salaries as I understand it which cannot be changed at the next session of the legislature, or at some succeeding session, but in order to change this grading of salary it will necessitate a change in the constitution; am I not right? (A member: No.)

I am not right; but in any event we are fixing the salaries to remain for some time at least; and I for one, as I said before, believe in fixing the salary at such a figure that we will command the very best talent in the profession.

Mr. Parberry of Meagher: It seems to me that the key-note has not been struck yet; if the judges were to be appointed by the Governor then the argument would hold; but we have the right to elect our judges, and we all know that the race is not to the swift nor the battle to the strong but the best rustler gets ahead of us all. (Laughter) And how often will it be and how often has it been that the poorest and most incompetent man has been elected; and I hold that if talent such as we have had to represent us here for the past twenty years—people generally have been satisfied with it—it has been the average talent in the Territory—and if they refuse to act for us now there are plenty more back in the States that will come out here; and I do say that while I am in favor of paying a competent judge and paying him well, there are two sides to the question, and those who have to pay the fiddler have a right to dance once in awhile. (Laughter) If it were left to a vote of the people of this Territory I am sure they would not pay over $3,500, and I am sure they would get good judges. I would like to see this mileage question settled one way or another before we take a vote on this.

Mr. Goddard of Yellowstone: I believe that judges are hired the same as you can buy merchandise or any other commodity. I do not believe the gentleman from Jefferson (Mr. Joyes) will take issue with me on that proposition. I believe he is a smoker, and I do not believe when he goes into a cigar store he buys two cigars for five cents. If there is a box of cigars which he can buy at the rate of eight for a dollar, and another box alongside of it which he can purchase fifteen or twenty for a dollar, I believe he would take the eight for a dollar. It is the same way in the selection of judges—the same way in buying any article of merchandise. Now, so far as the salary is concerned it is not too high at $4000. It has been said that it is impossible to get a good lawyer to leave his practice and take to the bench for less than $4000; and I am in favor so far as the mileage question is concerned, of leaving that matter as it is unless it is in doubt; and if the matter is deemed to be in doubt on that proposition, I am in favor of making it definite by allowing the judges mileage in addition to the $4000. Now, so far as the constituency of the gentlemen in this convention is concerned. I do not believe that the majority of the voters of this Territory desire cheap judges and cheap decisions. We have had enough of that in other states and other territories. I do not know about this Territory but I do know, as well as every lawyer who has practiced at the bar of this Territory, that you cannot get good, competent judges to take the positions for less than $4000. Now, in regard to the instance that my friend from Meagher County cites with reference to importing judges from the States, judges are like other articles of merchandise, which come out here from the States—there is a great deal of freight on them, and all character of merchandise commands a higher price in Montana than it does in Minnesota or the other states, simply because they have to pay a higher rate of freight. The same rule would apply to judges. I am not in favor of returning to the old carpet bag system of importing judges or any other officer to fill the offices of the new state of Montana, and I am decidedly in favor of the proposition of $4000, and on this question of mileage I am in favor of allowing the judge mileage.

Mr. J. K. Toole of Lewis & Clarke. I dislike to take a position contrary to that of the Judiciary Committee in this matter, but the more I have heard of the arguments presented here to-day, the more it seems to me that at this first election, the first two years provided for under this constitution that $3500, ought to be a sufficient salary for the payment of these judges We will have to submit our work to the people of this Territory for ratification, and if we desire to meet with popular favor we have got to be circumspect so far as the amount of taxes are concerned which are to be entailed upon the people. Now, it is generally understood and believed that any sort of a constitution that is granted by this Convention would be ratified by the people of this Territory. It is barely possible that we may be deluding ourselves in that respect. As has been suggested here, the judges of the district courts of the Territory of Montana, four in number, have transacted the entire business of this Territory, and in addition to that the business of the Supreme Court of the Territory, holding two terms annually, they have done this for a salary of $3000 a year. We now propose to make eight districts—to subdivide that business up between eight different judges. In addition to releasing them from this large amount of business—of one-half of the amount—we have taken away from them the business of the Supreme court of the state, leaving eight judges to attend to the business of the district courts and an independent tribunal to attend to the business of the Supreme Court. By the method proposed by the gentleman from Cascade we will have saved $4000; of course it is not much, but if we save it all along the line as we proceed in the formation of the constitution, it will be of that much benefit to the people of the future state of Montana. I think it is worth something outside of a money consideration for a man to occupy the honorable positionu of a district bench in this state during its formative period for the first two years. The constitution provides that these salaries shall exist until otherwise provided by law. It requires no change in the constitution to regulate these salaries; and I believe after hearing the discussion of this matter that $3,500, per annum is enough.

Mr. Callaway, of Madison: The Committee of the Judiciary discussed this matter at some length. The proposition originally offered was a much higher rate than what is now proposed. If I mistake not I was the mover of that resolution in the committee. It fixed the salaries of the judges at $3,000 per annum. I will ask the members of this Convention to look over the history of their country and see if they do not find that the gentlemen who occupy the Supreme bench of the United States receive very much less salary than many of the practicing lawyers. It is not simply a matter of dollars and cents, Mr. Chairman, but the gentleman who goes upon the bench has a reputation to sustain. I know, that in Massachusetts, Kentucky, Illinois, I might even say Montana to-day, that it is a matter with them of public duty; it is a matter of reputation; it is something to them to go into history with their decisions; not that they have so much pride in simply occupying the positions, but that they can in the course of the administration of justice leave a name in history that is of more value than the mere matter of pride in holding the position. You take the judges of the Supreme Court of the United States to-day and perhaps any one of them will make more money at the practice of his profession than on the bench. There are men who have gone down in history that were distinguished as lawyers that were willing to accept the positions, and I believe now that there is one matter, Mr. Chairman, in the discussion of this question that we have somewhat overlooked. It is not a matter of demagoguery, but this question is really a matter of dollars and cents to the people of Montana. We want to be careful in beginning this state government and give at least an example to the people in the matter of economy. We are here to-day as the represetatives of the sovereign people of Montana, to formulate a government that they will approve of, and to lay down the foundations of a system that they will vote for; and if we put in our constitution those things that they object to, it will so much weaken the beginning of our state institutions. My opinion is that we can get the very best talent in Montana, as perhaps we have to-day upon the Supreme bench, at $35000 a year. These gentlemen now occupying the position are certainly worthy of our respect; they are the equal of the average lawyer, certainly, of the Territory of Montana; and I see no reason why we should burden ourselves with unnecessary taxation. Of course I want to see the office dignified. The reason I was opposed to the proposition of the gentleman here of having one judge for each county was that we cannot get gentlemen of that learning and integrity that would give that distinction and standing to the courts that we could by adopting the different system that has been adopted so far in the committee. I submit, Mr. Chairman, that the amount proposed by the gentleman from Cascade is sufficient compensation for a good lawyer in Montana to warrant him in accepting the judgeship. I think we would have no trouble in getting gentlemen to take that amount, and we will have on our district benches judges for whom, if we cannot be proud of them, we will have at least utmost respect.

Mr. Clark of Silver Bow: Just one word. The remarks of the gentleman from Lewis & Clarke (Mr. Toole) might be misleading in this, that he states, or rather suggests, that when eight judges are appointed or elected instead of the four that are now administering justice in this Territory, the work would be divided up, and that they would only have half as much to do. Now, we must take into consideration that the calendars in every district court are behind. In Silver Bow County, I think for more than a year the civil cases have been behind—at the last term of court I believe they only reached three or four civil cases—and justice is being withheld by reason of the dockets being so far behind. So I take it that when the state shall elect district judges, they will all have plenty to do, and as much as they can do. As to the question of economy, as sugested by the gentleman from Madison (Mr. Callaway) I believe that the people of this Territory simply want to get value for their money; they are simply economical when it is prudent or judicious to be so. They do not desire to get an article except it be the very best. Every merchant in this Territory knows that he can only sell the very best merchandise in this country. He does not bring a piece of shoddy goods out to this Territory because he knows nobody will buy it. Now, I take it the people of this Territory are anxious that they shall get the very best services possible in the administration of judicial affairs, and with all due deference to the gentlemen upon the bench in this Territory—they are able lawyers and faithful and competent public servants in every respect—but I say that considering the responsibility of the position which those gentlemen occupy, that the salaries that they now get are not commensurate with the duties and responsibilities of the position. I believe that the people of this Territory are in favor of securing the best talent. If this question is to be placed on the score of economy, then we can get lawyers here for $1000, or $1500 a year; but we do not want that kind of men. Let us pay good prices and get good services; and if it were necessary to get the best talent in the Territory to pay even $10,000 a year, I believe it would be better for the Territory on the score of economy alone.

Mr. Carpenter of Lewis & Clarke: I wish to say simply a word. I am satisfied that for a district judge in Lewis & Clarke County of the required ability to satisfy the people, he should have a salary of $4,000 a year. He may have more work to do than the judges of other districts, for a judge holding the position he will on the bench can do nothing else. Now, it is not the amount of work by which the salary is to be measured, because all of his time is taken so long as he can do nothing else. It is the quality of the judge. One district needs just as good legal ability as another; and therefore if you have a district system or a county system—a judge for each county—there ought to be just as able a judge in Dawson County as in Lewis & Clarke, although he would not have one-tenth of the work to do. Therefore I see no reason for making a distinction in salary; and if the salary in Lewis & Clarke or Silver Bow should be $4000, I know of no reason for making it less in any other district; but I do desire that whatever the salary shall be, it shall cover every dollar that goes into the judge's pocket as salary or emolument of any kind.

Mr. Hickman, of Madison: I will ask the indulgence of the house for a moment or two. I have heard a good deal said on the floor here today about the ability we should get in the judiciary; that is very true, we often have a diversity in different kinds of ability. Some had the ability to draw their salaries; some again have had the ability, as the report goes, to get away with more bad whisgey than most anybody else could; some again had the reputation for playing higher stacks of blue checks than another. Now, if that is the kind of ability we get I am opposed to paying for it; I think that the gentleman from Cascade has fixed the salary about right, but there is one point that I would like to see fixed before we go further, and that is the point in regard to paying mileage. Now, some of our judges—and I want to say that some of them had the ability to get away with more mileage than any other person ever known or heard of—the reason I object to a judge going into another county as a district is this, our county seat is sixty-five miles from Bozeman; our district judge has been residing at Bozeman. At the last term of court he brought in a bill against our county for six hundred and thirty-four miles from Bozeman to Virginia City and back. Now, that was just the reason why I wanted mileage included in this salary so that they cannot draw it. I do not care what they fix the salary at, whether $3500 or $4000, but I want to cut off this little perquisite. Six hundred and thirty-four miles from Virginia City to Bozeman and back. Sixty-five miles is what the starrouters get. Now, our county commissioners cut off fifty miles for his going around by the way of Garrison and up to Dillon, when he could have gone up by the way of the Montana Central and saved fifty miles. I will vote for the propsition of the gentleman from Cascade because I believe we can get as good ability for that as for any other.

Mr. Collins of Cascade: The Judiciary Committee upon a thorough investigation of this matter decided that two judges should have $4000, one judge $3500 and eight judges $3000. Now, certainly $3500 would be a very high compensation for all the judges, and the members of the legal profession who have spoken here all favor this report recommending a compensation of only $3000, for a majority of the judges. I believe that if this section passes and the next section passes that the construction will be that there will be no mileage. I do not see in the world how a judge can receive any mileage under a reasonably fair construction of the succeeding section.

Mr. Whitehill, of Deer Lodge: I am a little surprised at the course of this discussion. The very gentlemen who are opposed to this salary and who are moving for a reduction I have heard boast of the resources of Montana, boast of a $100,000,000 of taxable property here, boast of her rich agricultural resources, boast of her mines, the richest in the world, boast of the pure air of Montana and the rich grasses that make the beef and the wool grow; and yet now they are coming in here and quibbling about a few dollars to pay to good officers. Now, I lived in one state—perhaps some of my friends here may call it a rotten borough—but I will say that in that state there are people just as good as the people in Montana, as intelligent, as cultivated people, and at the adoption of the constitution of that state there was taxable property only of about forty millions of dollars. Here we boast of one hundred millions. In that state there were three Supreme judges at the first election, and my recollection is that there were nine district judges. The salaries of the Supreme judges was $7000 a year, and scarcely a district judge had less than $4000, and some of them as high as $7000. Now, if Nevada with her population could pay such salaries—and I will say for them that the Supreme court decisions of Nevada which are now printed are respected everywhere, and I cannot say as much for the Supreme court decisions of Montana; for if you are to believe some of the criticisms which I have heard lawyers of Montana make they are some of the measliest decisions ever written—and yet that is the character of judges you want to force upon us now. I am in favor of higher salaries and I do say that $4000 and $5000 is not too much to pay our judges, and if you do that we will have decisions of the Supreme court of Montana which will command as much respect as the decisions of the Supreme court of Nevada.

The Chairman put the question on the amendment, and a division being called for, the motion was carried by a vote of 32 to 29.

Mr. Burleigh, of Custer: Mr. Chairman, I sent up an amendment.

The Chairman: The amendment of the gentleman is not quite germain to this portion of the section.

Mr. Carpenter, of Lewis & Clarke: I offer the following amendment.

The Chair: The Clerk will read the amendment of the gentleman from Lewis & Clarke.

Mr. Carpenter, of Lewis & Clarke: This is to settle the question of mileage or no mileage.

The Clerk read as follows: To be added to section 29: "No state or judicial officer shall in any case receive or be paid any mileage or any sum for traveling expenses except upon filing vouchers showing the amount claimed for mileage or expenses of traveling which have been actually paid by him, accompanied by affidavit that it was necessary in the discharge of official duty to travel the number of miles charged for."

Mr. Carpenter, of Lewis & Clarke: A person receiving mileage can receive no more than he has actually paid. He cannot speculate on his mileage. That does not provide for mileage at all. It only limits the amount received in case mileage is provided.

The motion was seconded.

The Chair stated the motion.

Mr. Middleton, of Custer: It seems to me if this matter is carefully considered that a provision should be made for mileage. Now, take it in the districts where the county constitutes a district there would be no necessity for traveling at all; the court will be at the county seat. Take it in other districts composed of three counties, where the judges are required to hold four terms of court in each county, his actual necessary traveling expenses will be considerable, and there certainly should be a provision inserted here. I am in favor of the proposition of the gentleman from Lewis & Clarke that it should not be in the nature of mileage but in the nature of the actual necessary traveling expenses; but it seems to me in a district where the judges must necessarily travel from one county to another, that in order to make their salaries equal to those where they have no traveling at all that there should be some provision for the actual necessary traveling expenses.

Mr. Carpenter, of Lewis & Clarke: The point is simply this, that in no case a person shall receive back more than he pays out.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, and a division being called for the motion was carried by a vote of 40 to 9.

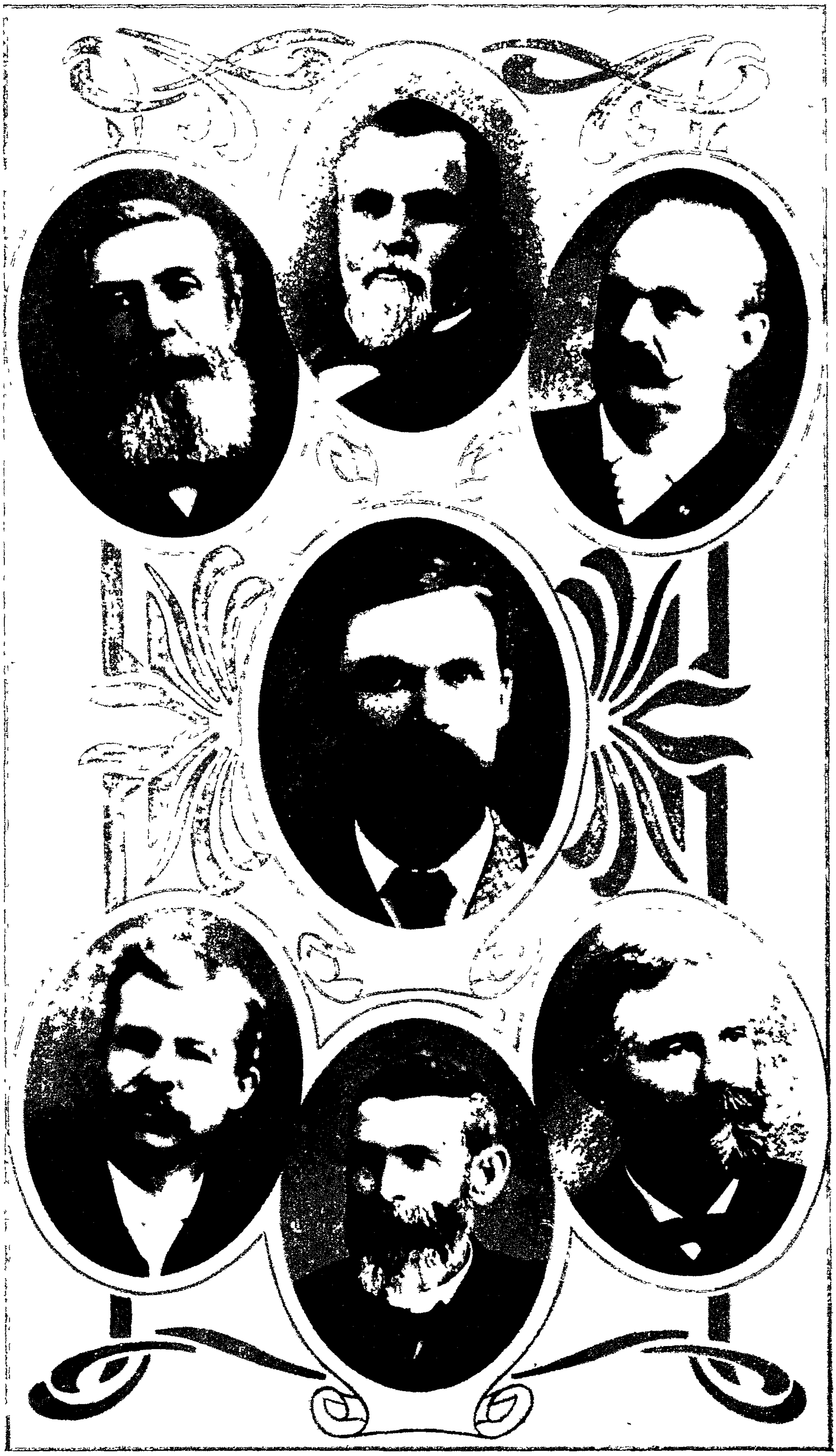
The Chairman: The question now recurs upon the original amendment of the gentleman from Yellowstone as amended by the action of the Committee, which is to strike out and insert. The question is to strike out after certain words and insert the salary of $3,500

The Chair put the motion on the amendment of the gentleman from Yellowstone, and the same was declared carried

The Chairman: The Clerk will read the amendment to the section of the gentleman from Custer.

The Clerk read as follows: Amend section 29 by inserting after the words "Supreme Court" at line 3, the words "and the District Judges"; also strike out all the words after the word "state" in line 4, to and including the word "taxation" in line 8, so as to read: "The salaries of the Judges of the Supreme Court and the salary of each District Judge shall be paid by the state."

Mr. Burleigh, of Custer: I desire to say here in support of that motion that I believe it to be perfectly right and proper for the state to pay out of its treasury the salary of all the judges. I take it that all these judges, both the judges of the Supreme and District courts, are



CONRAD KOHRS
HENRI J HASKELL

PERRY W McADOW
TIMOTHY E COLLINS
ALEXANDER F. BURNS

GEORGE O EATON
JOHN E RICKARDS

state officers. It is apparent to everyone, and a well known fact, that in the administration of justice, more than one-half of the time of our district courts is taken up in the trial of criminals for offenses against the laws of the Territory. It is also well known that the Territory is compelled to pay its officers, such as sheriff, clerk of the court and others; it is compelled to pay the witnesses and the jurors, which amount to a great deal more than one-half of the whole expense of the court. The United States has been paying the judges of the Territorial districts their salaries, and I see no good reason why the salaries of these judges should not be paid out of the state treasury. True, it will be said it makes no difference. It is like putting the hand into one pocket and taking out money and putting it in the other. I do not look at it in that way; but even if I did these men are officers provided for by the constitution, and in the strictest sense of the word are state officers and their salaries should be paid out of the state treasury by warrants drawn therefrom. We have in our small county enough to pay for punishing criminals for offenses against the laws of the state. There is no reason why we should saddle the whole expense, or even one-half of it; and I think it is an act of justice to the counties—it will simplify the method of procedure and method of doing business to provide here that these state officers in common with other state officers should be paid out of the state treasury instead of the treasury of the different counties. It will simplify the manner of doing business. Here where we have three counties in one district we have got to divide it up and send around to the different counties and collect the pay for the attorneys and judges. I think we should not be incumbered by any such burdensome method of doing business, and for that reason I have offered this amendment.

Mr. Collins, of Cascade: Mr. Chairman, I believe the judges should be paid by the state for another reason, that the matter of their salaries should be as far removed as possible from the people they are serving. It is certainly a state office There cannot be any doubt about that, whether they are within the boundaries of a county or within the boundaries of four or five counties; and it seems to me it would add dignity to the court itself to remove as far as possible the matter of paying the salaries from the people of the county. Now, another consideration is this: in some counties of Montana the warrants are worth only 60 or 75 cents, and in other counties they are worth par. I believe it would be better, better for the officer himself, better for the state and better for the system, that the state should pay all the salaries

The Chairman: The effect of the amendment which has been read would be to strike out of the section the words "In effect that the counties shall pay portions of the salaries of the judges, and that the state shall pay the entire amount of the judicial salaries.

The Chair then put the question, and a division being called for the motion was carried by a vote of 38 to 16.

Mr. Joyes, of Jefferson: I desire, Mr. Chairman, to move to strike out the word "five" in the 9th line and insert the word "four"; so that the line shall read: "Judges of the Supreme Court shall be paid a salary of four thousand dollars per annum each."

Mr. J. K. Toole, of Lewis & Clarke: After the adoption of that amendment, Mr. Chairman, it will be necessary to strike out of the section all after the word "state" in line 4 up to and including the word "taxation" in line 8.

The Chair: The motion now is, in line 9 strike out the words "Five thousand dollars per annum each," and insert the words "Four thousand dollars each."

Mr. Whitehill, of Deer Lodge: I move to amend that by inserting the words "six thousand dollars."

The motion was seconded.

The Chairman The Chair will follow the custom in Legislative bodies on making appropriations and put the question on the smallest sum first.

Mr Joyes, of Jefferson I desire simply a word upon that proposition. We have decided here that the district judges shall receive only $3,500 per annum. Now, I believe that these district judges will have a great deal more work to do than the judges of the Supreme court. I know that in the district—I don't remember the number of it— but the district constituting Jefferson, Beaverhead and Madicon, that that judge is going to have a great deal more to do than any judge of the Supreme court, and I think that if $3,500 is a reasonable amount to pay the judge of that district or any other district in this Territory, then $4,000 is enough to pay a judge of the Supreme court. Now, we know that we have had able judges as judges of the Supreme court of this Territory, Congress has only paid them $3,000 per year. Those judges not only attended to the duties of judges of the appellate court, but they also attended to the duties of the district judges, and there were only four of them where we will now have eight. I do not believe that the judges of the Supreme Court will be occupied more than two months out of the entire year, and I believe $4,000 will be a large salary for the amount of work they will have to do; I believe in the interests of economy, as we are now about to start out on this state government, that we should look after all these matters; we should keep down all these expenses, and we should not pay several thousand dollars a year where there is no necessity, and where we can get judges to do the work for less and just as good judges, too. We have got now an able Supreme court in this state and we are only paying $3,000 a year; and I believe that if $3,500 is just and commensurate for a district judge, that $4,000 will be plenty for the Supreme judges. That is as much as they get in a great many of the states of this Union where they have more to do than in this state, and I think the amendment I have proposed here ought to be adopted.

The Chairman stated the amendment.

Mr. Robinson, of Deer Lodge: Mr. Chairman, I support the amendment for the reason assigned by the gentleman from Jefferson County. I do not believe the labors of the Supreme court judges for a number of years yet to come will require over three or four months' work at the farthest; that would be amply sufficient. When the first constitution of Montana was framed five years ago the salaries of the Supreme court judges in that constitution were fixed at $3,600 Now I do not see any reason why a material change should occur from that time to this, where the cost of living has very materially decreased from that time to this, and the work and labor now would not be much more than it was then; and I think that $5,000 to the Supreme judges and $3,500 for the district judges, considering the amount of labor to be done, is not in proportion. I think $3,500 is amply sufficient for the district judges; it is equivalent to $4,000 to the practicing attorney. There is no expense whatever attached to it. I think we have as competent men on the bench now as we will in all human probability have on the Supreme bench of the state; and when we find those men willing to work for $3,000, I believe to give them one thousand dollars more would be a liberal and fair salary; it would not be parsimonious and in connection with the honor of the position we would secure competent men on the Supreme bench.

The Chair put the question and a division being called for the motion was carried by a vote of 32 to 31.

There being no further amendments to section 29, the Clerk read section 30, as follows: "No judge of the Supreme or District Court shall accept or receive any compensation, fee, perquisite or emolument for or on account of his office in any form whatever, except the salary provided by law."

Mr. Burleigh, of Custer: I move to insert after the word "fee" in line 2 the word "mileage," so that it will read "No judge of the Supreme or District court shall accept or receive any compensation, fee, mileage, perquisite or emolument for or on account of his office in any form whatever, except the salary provided by law."

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer and the same was declared carried.

Mr. Middleton, of Custer: I wish to offer an amendment.

The Chairman: The gentleman from Custer offers the following amendment which the Clerk will read.

The Clerk read as follows: Add to section 30 the following words: "together with actual necessary traveling expenses incurred in the discharge of official duty."

The motion was seconded.

Mr. Middleton, of Custer: I understood the former motion was to add the word "mileage." It is not in the nature of mileage; it is actual traveling expenses.

Mr. Hogan, of Silver Bow: Will the gentleman kindly define the meaning of the words "actual traveling expenses"?

Mr. Middleton of Custer. Mr. Chairman, the expression "actual necessary traveling expenses" certainly ought to place the board of county commissioners, or whoever it might be that would audit the accounts, in a position where they would be able to determine the nature of the claim. The general acceptation of the term, I take it, is the distance actually traveled and the amount actually paid for that travel. It occurs to me that this convention does not want to provide a limit whereby certain of the district judges will be compelled to pay out perhaps three or four or five hundred dollars a year out of their salaries in order to get to the different places where they are obliged to hold courts; and it seems to me perfectly right that any public officer whose duty requires him to travel should be reimbursed for what he actually pays out. I am not in favor of a mileage prescribing a certain number of cents per mile; but he should be remunerated for what he actually and necessarily pays out in traveling from place to place in the distcharge of his official duty.

Mr. Hogan, of Silver Bow: I take a somewhat different view of this matter from what the gentleman from Custer does. It appears to me that the amendment which the gentleman from Lewis & Clarke offered and which was adopted, left the whole matter to the Legislature, and I think that is the proper place for it. Now, what "actual expenses" mean should be defined, in my judgment. One man might think it necessary for him to have four or five drinks of whiskey or a dozen of cigars that another man might not think necessary, and I think it ought to be left to the Legislature. There are quite a number of members here who are strictly opposed to having anything come into the constitution that can safely be left in the hands of the Legislature, and I am one of them now in favor of leaving this matter to the Legislature. I think the grounds are already well enough covered.

The Chair put the question on the motion of the gentleman from Custer and the same was declared lost.

There being no further amendments to section 30, the Clerk read section 31 as follows: "Section 31. No judge, or clerk of the Supreme court, or of any district court, shall act or practice as an attorney or counsellor at law in any court of this state during his continuance in office.

There being no amendments to section 31, the Clerk read section 32 as follows: "Section 32. The Legislative Assembly may provide for the publication of decisions and opinions of the Supreme Court.".

There being no amendments to section 32, the Clerk read section 33 as follows: "Section 33. All officers provided for in this article, excepting Judges of the Supreme Court, who shall reside within the state, shall respectively reside during their term of office in the District, County, Township, Precinct, City or Town for which they may be elected or appointed."

There being no amendments to section 33, the Clerk read section 34, as follows: "Section 34. Vacancies in the office of the Supreme or District Court or Clerk of the Supreme Court shall be filled by appointment, by the Governor of the State, and vacancies in the office of County Attorney, or Clerk of the District Court and Justices of the Peace shall be filled by appointment by the Board of County Commissioners of the County where such vacancy occurs. A person appointed to fill any such vacancy shall hold his ofice until the next general election, and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected."

There being no amendments to section 34, the Clerk read section 35, as follows: "Section 35. No Justice of the Supreme Court or District Judge shall hold any other public office while he remains in the office to which he has been elected or appointed."

There being no amendments to section 35 the Clerk read section 36, as follows: "Section 36. A cause in the District Court may be tried by a Judge pro tempore who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the cause; and in such case any order, judgment or decree, made or rendered therein by such Judge pro tempore, shal have the same force and effect as if made or rendered by the court with the regular Judge presiding."

There being no amendments to section 36, the Clerk read section 37, as follows: "Section 37. Any Judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office."

Mr. Burleigh, of Custer: I desire to offer the following amendment. After the word "bar" in the second line insert the words "of this state"; so that it shall read "a case in the district court may be tried by a judge pro tempore who must be a member of the bar of this state, &c."

The motion was seconded.

The Chair put the motion and the same was declared carried.

Mr. Whitehill of Deer Lodge: Mr. Chairman, I move that in section 9 the word "cause" be stricken out and the words "civil action" inserted therefor. I will just say that the word "cause" is rather ambiguous. It may be held that this includes a criminal action, whereas the plain intent of the section is that it should be limited to civil actions.

The Chair put the motion and the same was declared carried.

Mr. Burleigh, of Custer: Mr. Chairman, I move to insert in section 37, after the words "shall absent that after the word "shall" and before the word "absent" the word "voluntarily" shall be inserted.

The motion was seconded.

The Chair put the motion and the same was declared lost by a vote of 115 to 19.

Mr. Warren of Silver Bow: Mr. Chairman, I had an amendment to offer to section 16, at the time it was passed but neglected to put it in.

The Chair: The gentleman can go back by unanimous consent.

Mr. Robinson, of Deer Lodge: I object.

Mr. Carpenter of Lewis & Clarke: I desire to offer an amendment to the first section defining the jurisdiction of the court.

The Chairman: The gentleman from Lewis & Clarke wishes to go back to section 1.

Mr. Robinson, of Deer Lodge: I object.

Mr. Carpenter, of Lewis & Clarke: I supposed it was always in order.

The Chairman: No sir, the rule is that after paragraphs are passed they shall be considered adopted.

Mr. Clark, of Silver Bow: I move the Committee do now arise and report progress with the amendments.

Mr. Whitehill, of Deer Lodge: I wish to offer a section to be added to it and numbered section 38.

The Chairman: The Clerk will read the section as offered.

The clerk read as follows: Section 38. No Judge of a district court nor of the Supreme court shall after the first day of July, 1890, be allowed to draw or receive any salary unless he shall take and subscribe an affidavit before an officer entitled to administer oaths that no cause in his court remains undecided that has been submitted for decision for the period of ninety days."

Mr. Burleigh of Custer: I move the adoption of the section.

The motion was seconded.

Mr. Robinson of Deer Lodge: I am opposed to that motion. I know that it is incorporated in the California constitution, and from all I can learn it serves no good purpose whatever. I would rather trust to the honor of the judges to write and file their opinions and let them take their own time to it. I have never seen any cause for such a resolution, in all the experience of my life.

The chair put the question on the said motion and the same was declared lost.

Mr. Carpenter of Lewis & Clarke: I wish to offer an additional section.

The Chairman: The gentleman from Lewis & Clarke offers the following additional section.

The Clerk read as follows: "Section 39. The House of Representatives shall have the power of impeachment by a vote of a majority of all the members elected. The Court for the trial of impeachments shall be composed of the President of the Senate and the Senators, two-thirds of the whole number elected being present. On the trial of any impeachment against the Governor the Lieutenant Governor shall not act as a member of the court. No Judicial officer shall exercise his office after articles of impeachment shall have been preferred to the Senate until he shall have been acquitted, and no person shall be convicted without the concurrence of two-thirds of the Senators elected. Judgment in the case of impeachment shall not extend farther than to removal from office and disqualification to hold any office of honor, trust or profit in this state; but the party impeached shall be liable to prosecution and punishment according to law."

Mr. Robinson of Deer Lodge: I object to the introduction of it.

The Chairman: On what ground?

Mr. Robinson of Deer Lodge. On the ground that it is parliamentary law that you cannot put in as a substitute an additional section for what is really an amendment. This is really an amendment to Section 1, and it is simply put in here under the guise of a different subject. It is not germane.

The Chairman The Chair will be obliged to overrule the objection of the gentleman from Deer Lodge.

Mr. J. K. Toole of Lewis & Clarke: Mr. Chairman, I heard it argued here the other day, and I believe the gentleman from Cascade himself made use of an argument that struck me with some force, and that was so far as this question of impeachment is concerned it ought to be removed from political bodies. It is provided in this section that the impeachment shall be laid with the Senate, and I quite concur with the suggestion. But it seems to me that the amendment proposed by my colleague from Lewis & Clarke (Mr. Carpenter) puts this matter into the hands of the House of Representatives, which is the popular body, and which is more than likely to be a purely political and one-sided body as compared with the Senate of the State, which under the constitution for in all probability we will adopt the provision which has been reported from the Legislative Committee providing that certain senators shall hold over so that they do not all go out at one time and so that in all probabilty there would be at least a portion of the senate of the state which will hold over for the period of two years, and would not be subject to the criticism of representing any particular political excitement that might be on at the time of the impeachment. I think if it is desirable to relieve this from a political body as much as possible, so that it will not be controlled by political considerations, that this power of impeachment ought to rest with the Senate instead of the House of Representatives, a body which is elected every two years complete.

Mr. Carpenter of Lewis & Clarke. It is the custom, and in all constitutions the impeaching body is the lower branch of the legislature. It is so in the United States government; it is so in every state. The senate sits as the court. Sometimes the judges of the Supreme court sit with the Senate But this resolution removes it as far as possible from political influence by requiring a vote of two-thirds of the Senate to remove from office, although a majority of the House may prefer charges.

Mr. J. K. Toole, of Lewis & Clarke: I misapprehend the scope of the amendment.

Mr. Marshall of Missoula: I merely want to call the attention of the Convention to the report of the Committee on legislative departments. There is a provision reported which I think exactly covers the case (Reading) "The House of Representatives shall have the sole power of impeachment. The concurrence of a majority of all the members shall be necessary to an impeachment All impeachments shall be tried by the Senate, and when sitting for that purpose the senators shall be upon oath. etc The Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of the senators elected."

Mr. Carpenter of Lewis & Clarke: As it has been reported by the committee I will withdraw my proposition.

Mr. Hickman, of Madison: I wish to offer an amendment as an additional section.

Mr. Robinson of Deer Lodge: I object to any amendments going in. I will state that I do it for this purpose, because we are wasting a large amount of time in going over this thing in the Committee of the Whole, and in going over it again in Convention, as if it had never been gone over in the Committee of the Whole. It is a strange proceeding and in violation of all parliametary usages. The Chairman of this committee offered an amendment to the rules, and the committee have not reported back, and we are consuming so much time. We go over all this thing in the convention again.

The Chairman: The Chair would hold that the Committee of the Whole was instituted in parliamentary bodies for the very purpose of affording the very widest scope to amendment and debate, and it holds that this section is in order and germane to the proposition.

The clerk read the section as offered by the gentleman from Madison (Mr. Hickman) as follows: "Section.......... No court established by authority of this constitution shall have jurisdiction to hear, try or determine cases of divorce when the cause of complaint shall have originated outside of this state nor unless both the parties to the action were residents of the state at the time the cause of action occurred."

Mr. Hickman of Madison: I move the adoption of the section.

The motion was seconded.

The Chair put the motion and the same was declared lost.

Mr. Burleigh of Custer: I move the committee do now arise and report.

The motion was seconded.

The Chair put the motion and the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

The Convention was called to order.

Mr. Maginnis, of Lewis & Clarke: Mr. President, your Committee of the Whole have had under consideration Proposition No. 21, being the article on Judicial Departments and have made certain amendments thereto. They beg leave to submit the report and the amendments to the Convention.

The President: You have heard the report of the Chairman of the Committee of the Whole on Proposition No. 21' and if there be no objection the chairman will be allowed the requisite time in which to make a report.

Mr. Burleigh of Custer: I move we do now adjourn.

The motion was seconded.

Mr. Goddard, of Yellowstone: I move as an amendment the Convention take a recess until 8 o'clock.

Mr. Fields of Park: Before that motion is put I would like to ask leave of absence until Friday at 4 o'clock.

The President: If there be no objection the gentleman will be excused.

The Chair put the question on the motion to adjourn and the same was declared lost.

Mr. Collins of Cascade: I move that the Convention resolve itself into Committee of the Whole for the consideration of Proposition No. 14.

Mr. Hickman of Madison: I move to amend that we take a recess until 8 o'clock.

The Chair put the question on the amendment of the gentleman from Madison and the same was declared carried and the Convention took a recess until 8 o'clock p. m.

Recess.

Evening Session, 8 p. m.

The Convention was called to order by the President.

The Clerk called the roll.

Mr. Burleigh of Custer: I move that the Convention take up the consideration of Proposition No. 21, as reported back from the Committee of the Whole.

The motion was seconded.

The President: The Clrek has not yet made his report from the Committee.

Mr. Burleigh of Custer: I will withdraw my motion then.

Mr. Joy of Park: I move that this Convention resolve itself into Committee of the Whole for the consideration of Proposition No. 14.

The motion was seconded.

Mr. Maginnis of Lewis & Clarke: Mr. President, I hope that will not be done. The clerks have the material that we have been working on all the afternoon and we can go on and finish the Judicial schedule tonight.

Mr. Joy of Park: I withdraw my motion.

Mr. Maginnis of Lewis & Clarke: Mr. President, the Chairman of the Committee of the Whole on the Article on Judiciary is now ready to make his report.

The President: The report of the chairman of the Committee of the Whole on Proposition No. 21, will now be read.

The Clerk read as follows: Mr President, your Committee of the Whole beg leave to report that they have had under consideration Proposition No. 21, and return the same herewith with the accompanying amendments, and recommend that as amended the proposition do pase. Section 13 is amended to read as follows: "Until otherwise provided by law said districts shall be constituted as follows: First district, Lewis & Clarke County; second district, Silver Bow County; third district, Deer Lodge County, fourth district, Missoula County; fifth district, Beaverhead, Jefferson and Madison Counties; sixth district, Gallatin, Park and Meagher Counties; seventh district, Yellowstone, and Dawson Counties; eighth district, Choteau, Cascade, and Fergus Counties."

Section 29, is amended by inserting the words "and the district judges" after the words "supreme court" on the third line.

Also by striking out all of the words after the word "state" on the fourth line to and including the word "taxation" on the 8th line, so as to read "The salaries of the Justices of the Supreme Court and the salary of each district judge shall be paid by the state."

Also by striking out all the section after line ten and inserting the words "thirty-five hundred dollars per annum each."

Also by adding thereto the following: "No state or judicial officer shall in any case receive or be paid any mileage or any sum for travelling expenses except upon filing vouchers showing that the amount claimed for mileage or expenses of travelling have been actually paid him, accompanied by affidavit that it was necessary in the discharge of official duty to travel the number of miles charged for."

Section 36 was amended by inserting after the word "bar" in line two the words "of this state."

Also by striking out the word "cause" on the first line and inserting in lieu thereof the words "civil action."

(Signed) MARTIN MAGINNIS, Chairman.

Mr. Warren of Silver Bow: Mr. President, Section 30 was also amended. After the word "fee" the word "mileage" was inserted on the recommendation of the gentleman from Custer.

The President: If there be no objection the clerk will make the correction.

Mr. Burleigh of Custer: I now move Mr. President, that Proposition No. 21, be put upon its final passage.

The motion was seconded.

The Chair put the motion and the same was declared carried.

The President: The Clrek will proceed to read by sections. If any amendments are desired to be offered they will be considered from time to time as we proceed.

Mr. Robinson of Deer Lodge: Mr. President, in talking with a member of this Convention from Jefferson County I have come to the conclusion that I desire to renew the motion which I made in the Committee of the Whole to amend by striking out the word where it occurs in creating the district as composed of the Counties of Beaverhead, Jefferson and Madison—to strike out the word "Jefferson" and create the ninth district out of Jefferson County.

The President: That will be in order as the clerk reads the section.

The Clerk read section one of Proposition No. 21.

Mr. Maginnis of Lewis & Clarke: Mr. President, I arise to a parliamentary inquiry. Ought not the first action of this Convention be to take action upon the amendments recommended by the committee of the Whole

The President: It is proper, I presume, to consider the amendments, but the sections will be subject to amendment in Convention.

Mr. Burleigh of Custer: I think, Mr. President, that the motion I made was to take up the bill and adopt it as amended, and that would cover the ground.

The President: The Chair did not understand that the gentleman's motion covered the proposition to take up and adopt, and it is very properly suggested by the gentleman from Lewis & Clarke that some action ought to be taken.

Mr. Maginnis of Lewis & Clarke: The first duty is to act upon the amendments submitted by the Committee, either as a whole or separately, and either to adopt or reject them.

Mr. Burleigh of Custer: Then I move that the report of the Committee of the Whole be adopted.

The motion was seconded.

Mr. Maginnis, of Lewis & Clarke: Will that have the effect of including the amendments?

Mr. Burleigh of Custer: Yes, as I understand parliamentary usage.

The President: The Chair then understands that the motion of the gentleman will comprehend the adoption of all the amendments as reported by the Committee of the Whole.

The Chair then put the question on the motion of the gentleman from Custer and the same was declared carried.

The President: The Clerk will now proceed to read section by section and the sections will be subject to further amendment.

The Clerk then read sections 1, 2, 3, 4, 5, 6, 7, and 8, as reported by the Committee of the Whole.

Mr. Dixon of Silver Bow: There is a mistake in section 8, that I think was corrected before.

The President: To what line does the gentleman from Silver Bow allude?

Mr. Dixon of Silver Bow; Line 7. The Clerk read the word "members" which should be "numbers".

The President: If there be no objection the Clerk will make the correction.

Mr. Winston of Deer Lodge sent up an amendment.

The President: The gentleman from Deer Lodge offers an amendment to Section 8 as follows: Amend section 8 by inserting after the word "years" in line 9 the words "after the first election as herein provided the judge oldest in commission shall be chief justice of the court, and if there be more than one commission of the same date, the court may select a chief justice from the judges holding the same.'

Mr. Winston of Deer Lodge: The section seems to be in doubt as to who shall act as chief justice after the first election; that provides that the member holding the oldest commission shall be the chief justice.

Mr. Dixon of Silver Bow: I hardly think this amendment is necessary. The section provides that the chief justice first elected shall hold his office for three years; then a successor to him may be elected, and that seems to be as simple and as good a way as the one proposed by Mr. Winston. I do not think there is any ambiguity about it as to who will be the chief justice.

The President: The chair desires to state that there is no second to the amendment and nothing before the Convention.

Mr. Collins of Cascade: I second the amendment.

Mr. Winston of Deer Lodge: It simply says that the chief justice, and in case of his absence the judge having the shorter term shall preside in his stead. I cannot see that it says there that the member who is elected for the shortest term is the chief justice. It seems to me it leaves it in doubt. That question was brought up when this section was discussed before.

Mr. Whitehill of Deer Lodge: The section reads that the chief justice shall after the first election be elected for the term of three years, but there is no provision as to who his successor shall be. At the end of the three years it is understood one of these associate justices might be the chief justice, and that evidently needs some correction. I have not examined it carefully. It evidently leaves the matter in doubt, and I believe if it passes just as it is there will be ambiguity in it I think the amendment as presented by the gentleman from Deer Lodge fully covers the case, and if it does change it, it simply provides that the man having the shortest term of office will go in as chief justice, and at the next election instead of electing a chief justice there will be a new judge. As it is now there is ambiguity.

Mr. Middleton of Custer called for the reading of the amendment.

The Clerk read the same.

Mr. Middleton of Custer: I do not think there is any ambiguity in the section as reported by the committee. The matter was discussed in the committee and I think the understanding was that the chief justice should be elected for the term of three years, and the other judges one elected for five years, and the other for seven, the understanding of the committee was that thereafter at the expiration of the term of office of the chief justice a chief justice should then be elected for six years. So far as I am personally concerned I concur in the report of the committee, although I believe it to be the better ruling,, as indicated by that amendment, that the oldest judge or the one whose commission dates back the farthest should be the chief justice. I know the rule in Michigan, where the judges are elected for eight years—four judges, one every two years—is that during the last two years of the judge's term on the bench he is chief justice; and I rather like that system; I presume that is the substance of that amendment; though so far as there being any ambiguity in the report of the Committee I do not think there is. The intention was that the chief justice should be elected by the people as chief justice to succeed the one who is elected whose term is fixed for three years.

The Chair put the question on the amendment and the same was declared carried.

The President: The clerk will read the section as amended.

The Clerk read section 8 as follows: "There shall be elected at the first general election provided for by this constitution one chief justice and two associate justices, who shall constitute the judges of the supreme court, and they shall hold their office until their respective successors are elected and qualified. The terms of office of said justices shall be designated on the ballots at the time of their election. The chief justice shall at said first election be elected for the term of three years, and said two associate justices one for the term of five years and one for the term of seven years, and after said first election one justice or more, if the legislative assembly shall increase the number to five shall be chosen every two years and the terms of said additional justices shall be fixed by law in such manner that at least one of said justices shall be elected every two years. After the first election as herein provided the judge oldest in commission shall be chief justice of the court, and if there be more than one commission of the same date the court may select the chief justice from the judges holding the same. The chief justice shall preside at all terms of the supreme court, and in case of his absence the judge having the shortest term to serve shall preside in his stead."

There being no further amendments to section 8 the clerk read section 9 as follows "Section 9. There shall be a clerk of the Supreme Court, who shall hold his office for the term of six years, except that the clerk first elected shall hold his office only until the general election in the year 1892, and until his successor is elected and qualified. He shall be elected by the electors at large of the State, and his compensation shall be fixed by law, and his duties prescribed by law, and by the rules of the Supreme Court.

There being no amendments to section 9, the clerk read section 10, as follows: "Section 10 No person shall be eligible to the office of Justice of the Supreme Court, unless he shall have been admitted to practice in the Supreme Court of the Territory of Montana, be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in said Territory or State at least two years next preceding his election.

There being no amendments to section 10, the clerk proceeded to read section 11, as follows: "Section 11, The District Courts shall have original jurisdiction in all cases at law, and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all cases in which the debt, damage, claim or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and in all criminal cases amounting to felony and all cases of misdemeanor not otherwise provided for; of actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of actions of divorce and for annulment of marriage, and of all such special actions and proceedings as are not otherwise provided for. And said courts shall have the power of naturalization and to issue papers therefor in all cases where they are authorized so to do by the laws of the United States. They shall have appellate jurisdiction in such cases arising in justices and other inferior courts in their respective districts as may be prescrbed by law and consistent with this Constitution. Their processes shall extend to all part of the State—provided that all actions for the recovery of, the possession of, quieting the title to, or for the enforcement of liens upon real property shall be commenced in the county in which the real property, or any part thereof, affected by such action or actions, is situated. Said courts and the judges thereof shall have power also to issue, hear and determine, writs of mandamus, quo warranto, certiorari, prohibition, injunction and other original and remedial writs, and also all writs of habeas corpus, or petition by, or on behalf of, any person in actual custody in their respective districts. Injunctions, writs of prohibition, and habeas corpus, may be issued and served on legal holidays and non-judicial days.

There being no amendments to Section 11, the Clerk proceeded to read section 12. as follows: "Section 12. The State shall be divided into judicial districts in each of which there shall be elected by the electors thereof one judge of the District Court, whose term of office shall be four years, except that the district judges first elected shall hold their offices only until the general election in the year 1892, and until their successors are elected and qualified. Any judge of the District Court may hold court for any other district judge, and shall do so when required by law.

There being no amendments to Section 12, the Clerk proceeded to read Section 13, as follows: "Section 13. Until otherwise provided by law, said districts shall be constituted as follows: First District, Lewis & Clarke County, Second Dictrict, Silver Bow County; Third District, Deer Lodge County; Fourth District, Missoula County; Fifth District, Gallatin County; Sixth District, Jefferson County; Seventh District, Custer County; Eighth District, Beaverhead and Madison Counties; Ninth District, Park and Yellowstone Counties; Tenth District, Cascade and Meagher Counties; Eleventh District, Fergus and Dawson Counties; Twelfth District, Choteau County."

Mr. Robinson of Deer Lodge sent up an amendment, to Section 13.

The President: The gentleman from Deer Lodge offers an amendment to section 13 as follows: Amend Section 13 by striking the word "Jefferson" out of the Fifth District where it occurs, and the word "Meagher" out of the Sixth District where it occurs and add the "Counties of Jefferson and Meagher shall constitute the Ninth District."

Mr. Collins of Cascade: I move to amend by inserting "and Cascade" in the proper line.

The President: The gentleman from Cascade will please send his amendment up in writing. The Chair understands that the amendment offered by the gentleman from Cascade does not in any way conflict with the amendment offered by the gentleman from Deer Lodge, and as they are separate propositions the question will be upon the amendment offered by the gentleman from Deer Lodge.

The motion of the gentleman from Deer Lodge was seconded.

The Chair stated the question.

Mr. Parberry of Meagher: I can see no good reason why that change should be made. According to this apportionment we find that Jefferson County has a voting population of only 2500 and that Gallatin has 1700 and Park 1700; and the argument adduced here by the gentleman from Jefferson County if it proves anything it only proves that the judges that they have had have been derelict in their duty. Now if the judge had only three counties to attend to he certainly could give them four months each, and the whole argument proves this that the judges probably or somebody else, whoever it was, had not done their duty; and they now have the privilege of electing a judge who will attend to his business and finish up the docket. If we start in to assume this debt and pay all the judges, why we will all want a judge—we will all want a district. Now, it is only a short time until the legislature meets and this certainly can do no harm where it is. Railroads are being built, our counties are being developed, and it may be that we will all need a district each. We expect to have a population double what we have now as soon as our mining districts are opened up. But I do not see the necessity of changing the present arrangement until we actually need the change and then the legislature can provide for the growing wants of the different counties.

The Chair put the question on the motion of the gentleman from Deer Lodge and the same was declared lost.

Mr. Collins of Cascade: I withdraw my amendment.

The President: The gentleman from Cascade withdraws his amendment. If there be no further amendments to Section 13 the clerk will read section 14.

The Clerk read section 14, as follows: "Sec. 14. The Legislative Assembly may increase or decrease the number of judges in any judicial district. Provided, That there shall be at least one judge in any district established by law, and may divide the state, or any part thereof, into new districts: Provided, That each be formed of compact territory and be bounded by county lines, but no changes in the number or boundaries of districts shall work a removal of any judge from office during the term for which he has been elected or appointed."

There being no amendments to section 14, the clerk read section 15, as follows: "Section 15. Writs of error and appeals shall be allowed from the decisions of the said district courts to the Supreme court, under such regulations as may be prescribed by law."

There being no amendments to section 15, the clerk read Section 16, as follows: "Section 16. No person shall be eligible to the office of Judge of the District Court unless he be at least twenty-five years of age, and a citizen of the United States, and shall have been admitted to practice law in the Supreme Court of the Territory or State of Montana, nor unless he shall have resided in the State or Territory at least one year next preceding his election. He need not be a resident of the district for which he is elected at the time of his election, but after his election he shall reside in the district for which he is elected during his term of office."

Mr. Warren of Silver Bow: I have an amendment to offer to that section.

The President: The gentleman from Silver Bow offers to amend section 16 striking out in line 4 as follows: "He need not be a resident of the district for which he is elected at the time of his election."

The motion was seconded.

Mr. Middleton of Custer: That matter was very fully discussed and considered in the Judiciary Committee, and I hope the amendment will not prevail. It is a notorious fact that in many of the counties, and I presume it may be said in some of these districts as they are provided for, that there may not be such material as the people desire to put upon the bench, and the section as it stands now leaves it so that it is in the power of the people to elect such a lawyer from any part of the Territory as they may deem a proper and fit person to fill that office; and I believe that the people should have that privilege. There are several counties that are comparatively new; they have little or no material—in fact no material worthy of being considered competent or fit to put upon the bench; and I submit that the matter was fully and carefully considered and that the Judiciary Committee were unanimous on that proposition that it should be in the power of the people in any one district to elect a judge from anywhere in the Territory; provided however that from the time of his election he shall then become and remain a resident of the district during the term of his office.

Mr. Burleigh, of Custer: I regret exceedingly to take issue with my friend on this matter. I know the consideration he has given to the subject, and I know it was talked over before the Judiciary Committee; but a different condition of things existed in the Judiciary Committee when this provision was inserted; it was provided that there should be twelve districts; and inasmuch as Custer county was made a separate district and Dawson county a separate district—(Interrupted)

Mr. Haskell of Dawson: No; no.

Mr. Burleigh of Custer: Well, some other county; I will say perhaps Yellowstone or some other county. We looked around and we could not see quite as good material as we wanted established in our county (laughter). But since then there has been a change. There has been a consultation; we have now attached to Custer County, Yellowstone and Dawson Counties: We have certainly ample material there, and I am certainly opposed to sending out a dragnet all over God's heritage to get material to fill these positions. If we cannot get material to make judges I am in favor of disorganizing our county and attaching us to some other county. I expected to support the bill as it came from the committee, but it has been changed. As I said before, I dislike exceedingly to take issue with my friend. I know he is a lawyer and a good lawyer. I know he is a man of deliberation, great soundness of judgment and one of the most conscientious men in the country; but still he is likely to be mistaken like myself and others.

Mr. Middleton, of Custer: If I may have the indulgence of the convention for a moment to reply to the gentleman, it is true that a change has been made in the number of districts. The report of the Judiciary Committee provided for twelve judicial districts. The article as it stands now provides for eight; but in my judgment there are districts now that are not any better off than they were when we provided for twelve. Now, the gentleman, my colleague from Custer, is a lawyer, and I am inclined to believe a candidate for the judgeship—(Interrupted) (laughter)

Mr. Burleigh, of Custer: I deny that.

Mr. Middleton, of Custer: And he would represent to this Convention that he represents the sentiment of the voters of that district. I submit to the convention that I do not believe he does. I believe it is the right of the people in that district, or any other district, to have such material on the bench as can be procured in the state of Montana. Individually, I was opposed to judges being elected at all. I believe that not only the district court but the Supreme court judges should be appointed by the Governor and confirmed by the Senate of the state. I believe it would insure a safer and better class of judicial officers than can be obtained by the voice of the people; but that did not seem to be the judgment of the committee, and I concurred in their perhaps more mature judgment than mine. But the action of the committee and its judgment seemed to be unanimous that the people should have the right to select judicial material from wherever it could be had within the Territory of Montana; and although it may be true, as the gentleman suggests, that in the counties of Dawson, Yellowstone and Custer there is such material as the people there desire to put on the bench, I submit if there is not, that the people should have the right to go outside of that district and select their judge from the city of Helena or anywhere else that they can find a lawyer that they believe is a fit, competent and proper person to put upon the bench. For those reasons I hope the amendment will not obtain.

Mr. Burleigh, of Custer: I am willing to leave this argument here to be determined by the Convention.

Mr. Brazleton, of Deer Lodge: I am not a lawyer; I am simply a Methodist; but I would suggest that if these counties have not legal talent enough to take care of their own judicial interests, that we make another requisition on Minnesota. (laughter)

Mr. Warren, of Silver Bow: This matter reminds me very much of a Democratic convention that was held in Deer Lodge in the early days. When the Bear Town delegation put a candidate for sheriff in nomination, Johnnie O'Rourke arose and said: "I am not acquainted with the gentleman." One of the delegates arose and said: "I have a letter from him and he says he will leave Ireland in two weeks, and will be here before the day of election." (Laugher)

That is the way it is with these judges; they might want some gentleman living here or in Butte City for a judge, provided he was elected he would go down to the district where they have no lawyers and proceed to draw the salary.

Mr. Maginnis, of Lewis & Clarke: I move the previous question upon the pending amendment.

The motion was seconded.

Mr. Whitehill, of Deer Lodge: I hope the gentleman will withdraw his motion. I desire to offer an amendment, not to make a speech. It seems to me the section ought to be amended.

Mr. Maginnis, of Lewis & Clarke. I will withdraw in favor of an amendment but not a speech.

Mr. Whitehill, of Deer Lodge: I move to amend by striking out on line four the two words in the latter sentence so that it shall read "He shall be a resident of the district for which he was elected at the time of his election," and strike out all the balance

Mr. Warren, of Silver Bow: I accept that amednnment.

Mr. Robinson, of Deer Lodge: I trust the amendment will not prevail.

Mr. Hogan, of Silver Bow: I arise to a point of order. There can be no debate.

The President: The question pending before the Convention is that the main question be now put. The gentleman offering that motion yielded for the purpose of offering an amendment. That amendment has been accepted by the gentleman who moved the first amendment, and the question now is, shall the main question be now put?

The Chair put the question and the same was declared carried.

The President: The question now before the Convention is upon the amendment offered by the gentleman from Deer Lodge.

The Clerk read the amendment.

The President: This amendment was acepted by the gentleman from Silver Bow.

Mr. Middleon, of Custer: I call for the ayes and noes.

The ayes and noes were called.

Mr. Collins, of Cascade: In explanation of my vote I wish to say that I am positively against carpet-bagism; I am against putting it in our constitution, so that I shall vote "yes."

The President announced the vote stood as follows:

Ayes—Aiken, Brazleton, Breen, Buford, Burleigh, Burns, A. F.; Burns, A. J.; Burns, Edward; Collins, Durfee, Dyer, Eaton, Gibson, Haskell, Hickman, Hogan, Joy, Kennedy, Knippenberg, Kohrs, Marion, Mitchell, Ramsdell, Muth, Reek, Warren, Whitehill, Winston, Witter, Mr. President.

Noes—Bickford, Browne, Callaway, Cardwell, Carpenter, Cauby, Chessman, Conrad, Cooper, Courtney, Craven, Dixon, Gaylord, Gillette, Goddard, Graves, Hartman, Hatch, Hershfield, Hobson, Joyes, Knowles, Kanouse, Loud, Maginnis, Marshall Mayger,, Middleton, Myers, Parberry, Robinson, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, Jos. K.; Toole, J. R.; Watson.

Ayes: 30. Noes: 39.

Absent: Bullard, Field, Hammond, Luce, McAdow, Webster.

The President: The Clerk will read section 17.

The Clerk read section 17 as follows: "Section 17. The District Court in each county, which is a judicial district by itself shall always be open for the transaction of business, except on legal holidays and non-judicial days. In districts where two or more counties are united, until otherwise provided by law, the district judges shall fix the terms of court, provided that there shall be at least four terms a year held in each county."

There being no amendments to section 17, the Clerk proceeded to read section 18, as follows: "Section 18. There shall be a Clerk of the District Court in each county, who shall be elected by the electors of his county. The Clerk shall be elected at the same time and for the same term as other county officers. The duties and compensation of the District Clerk shall be as provided by law.'

Mr. Myers, of Yellowstone: I desire to offer an amendment.

The President: The gentleman from Yellowstone (Mr. Myers) offers the following amendment to section 18: Strike out the words "other county officers" in line 3 and insert in lieu thereof "the district judges."

The motion was seconded.

The Chair put the question on the motion of the gentleman from Yellowstone and a division being called for the motion was carried by a vote of 40 to 13.

The Clerk read the section as amended as follows: "Section 18. There shall be a clerk of the District court in which county he may be elected by the electors of his county. The clerk shall be elected at the same time and for the same term as the district judges. The duties and compensation of the District Clerk shall be as provided by law."

Mr. Collins, of Cascade: I would like to ask what is the meaning of this. Shall the office be for two years or shall it be for six years?

(A member) Four years.

Mr. Burleigh, of Custer: The first term will be three years.

There being no further amendments to section 18, the Clerk read section 19 as follows: "Section 19. There shall be elected at the general election in each county of the state, one County Attorney, whose qualifications shall be the same as are required for Judges of the District Courts, except that he need not be over twenty-one years of age, and whose term of office shall be two years. He shall have a salary to be fixed by law, one-half of which shall be paid by the state and one-half by the county in which he is elected; he shall in addition to said salary receive such fees as may be provided by the Legislative Assembly and shall perform such duties as may be required by law.

Mr. Middleton, of Custer: I desire to offer an amendment to that. I have not got it prepared, but it is to strike out that part of the section commencing with the word "elected" on line 5; strike out these words: "he shall in addition to said salary receive such fees as may be provided by the Legislative Assembly." If the Chair will permit me a moment I will write out the amendment.

Mr. Collins, of Cascade: Mr. President, while we are waiting for this amendment I would like to suggest to the Judiciary Committee that this officer is not elected at the time that other officers are elected. Is that the intention of the committee?

The President: Will the Chairman of the Judiciary Committee answer the question of the gentleman from Cascade?

(The Chairman of the Judiciary Committee was temporarily absent.)

The President: The gentleman from Custer offers to amend section 19 by striking out after the word "elected" in line 5 the following words "He shall in addition to said salary receive such compensation as may be provided by the Legislative Assembly."

The motion was seconded.

Mr. Middleton, of Custer: Mr. President, I think every lawyer in the house who has ever filled the office of a county or district attorney will agree with me that it is the worst system of compensation in the world that allows fees to a county attorney. I believe he should have a fixed salary, and should receive no other perquisite or compensation whatever. I have known in my brief experience, many times of county attorneys being accused of prosecuting actions and making complaints, and all that sort of thing for the fees that were in it, against persons against whom a complaint never ought to have been made; and if you permit the Legislature to authorize the payment of a single dollar in fees you will place the county attorney in a position where those accusations can be made against him regardless of how groundless they may be. I have in my own experience spent three days in the trial of a case in the Probate court that if I had procured a conviction would only have paid five dollars in fees and yet I was accused after having obtained a conviction of having made that complaint and prosecuted that case for the five dollars fees that were in it. I believe Dr. Burleigh will bear me out in this position. He is the present county attorney down there and knows how that kind of thing operates. And in view of the fact that we have seen fit in this constitution to practically abolish the grand jury, and throw the entire matter of information and complaint in the hands of the county attorney, it is important it seems to me that he should be placed where accusations of that kind cannot be made against him. And for those reasons I believe that the hands of the Legislative Assembly should be tied to such an extent that they cannot at any time provide for a county attorney receiving a single dollar for fees, but that they shall fix such salary as they deem that officer should have and he should have nothing but a salary.

Mr. Burleigh, of Custer: I agree fully with my friend in what he has said in regard to the effect of this fee system; but not for the reasons which he assigns. Now, we are all a little sensitive—I suppose some more so than others—and I think it likely that my friend is a little more sensitive than I am; his skin is a little thinner than mine. Now, while I do not believe the system is right, I do not care a continental what he says about me in that respect. If I do my duty I do not care a cent what anybody says.

Mr. Knowles, of Silver Bow: I agree with the gentleman as to all criminal matters. I do not believe there should be any fees in criminal matters. But there may be a great many duties assigned to a county attorney in civil matters, and in those cases I think there ought to be fees. There may be suits for the collection of taxes, and that will be imposed upon the county attorney, and in such cases as that they ought to have a reasonable fee. In prosecutions I am satisfied that the rule that the county attorney should not have fees ought to prevail. I have known myself where county attorneys have not only been accused of prosecutions on account of the fees that they could make out of them, but the accusations were true; (laughter) and for that reason, I think that temptation ought to be removed; and I think if the gentlemen feel that the Legislature would not be prudent about that matter, the best thing would be to adopt a plan by which county attorneys shall receive extra compensation only in civil cases.

Mr. Middleton, of Custer: I will accept that amendment if the gentleman offers it.

Mr. Burleigh, of Custer: I would like to ask the gentleman from Silver Bow one question, and I hope it will not be considered offensive. Has the gentleman ever been a county attorney?

Mr. Knowles, of Silver Bow: I have sir.

Mr. Burleigh, of Custer: Well, then, of course I have nothing else to say. (Loud laughter)

Mr. Knowles, of Silver Bow: I know the position that the gentleman from Custer is in and the temptation he is subject to. (Renewed laughter)

Mr. Collins, of Cascade: Mr. President, I was very sorry to see the gentleman accept the amendment of the gentleman from Silver Bow and I will have to insist upon a division of the question. I believe that a district attorney should receive no fee in either civil or criminal cases. The county attorney is the attorney of the board of county commissioners, and under the present system of laws he is the attorney of every other county officer. If you allow him fees in civil matters he will charge a good round sum for every little advice he gives, and he will see that the county officers or the board of county commissioners or some remote justice of the peace will ask him quite often for opinions. I believe it is as bad for a county attorney to charge a fee in a civil case as in a criminal case; in fact, it can be made worse; and I hope that the first amendment of the gentleman from Custer will prevail—that they be salaried officers, and that there be no fees attached to them. The Legislature will certainly give the gentlemen plenty of salary for the services that are performed.

Mr. Middleton, of Custer: With the consent of the Convention, I will allow my amendment to stand and let that be voted upon and if that fails then I will move the amendment offered by the gentleman from Silver Bow.

The President: The question is then upon the amendment offered by the gentleman from Custer as first stated, striking out in line 5 after the word "elected" the following words: "he shall in addition to said salary receive such fees as may be provided by the Legislative Assembly."

Mr. Collins, of Cascade: I would like to see the amendment of the gentleman from Silver Bow first voted upon, so that if that fails I would like to have the privilege of voting against the whole thing.

The President: The amendment is included in the first amendment, unless the gentleman asks for a division.

Mr. Collins, of Cascade. I withdraw my request for a division of the question.

The President: Then the question as placed before the convention shall be upon the amendment offered by the gentleman from Silver Bow that in all civil cases the county attorney shall receive such fees as may be provided by the Legislative Assembly.

The Chair put the question on the motion and the same was declared lost.

The President: The question now recurs upon the amendment of the gentleman from Custer.

The Chair put the question on the amendment of the gentleman from Custer and the same was declared carried.

The Clerk read the section as amended.

Mr. Loud of Custer sent up an amendment.

The President: The gentleman from Custer offers the following amendment: Amend section 19 by striking out the words "except that he need not be over twenty-one years of age" on line 3.

The motion was seconded.

The Chair put the motion on the amendment of the gentleman from Custer and the same was declared lost.

Mr. Browne of Choteau sent up an amendment.

The President: The gentleman from Choteau moves to amend section 19 by inserting the following in line 4 after the word "years": "except that the county attorney first elected shall hold his office until the general election in the year 1892."

The motion was seconded.

Mr. Knowles, of Silver Bow: I do not understand the amendment.

The Clerk read the amendment.

Mr. Warren, of Silver Bow: Do I understand that the county attorneys now holding office, unless they are decapitated, hold until December of the next year? Now, what construction would that put on the officers now in office? If it means to throw out all the county attorneys of this Territory now, I am opposed to the amendment.

Mr. Collins, of Cascade. It does not have that effect.

The President: So far as the present officers are concerned, it would have no effect upon them. It states that the county attorney first selected shall hold office, &c. It would not comprehend anyone who has been elected in the past.

Mr. Browne, of Choteau: My amendment was that he should be elected at the same time with all other county officers.

The Chair put the question on the motion of the gentleman from Choteau and the same was declared carried.

There being no further amendments to section 19, the Clerk read section 20, as follows: "Section 20. There shall be elected in each organized township of each county by the electors of such township at least two Justices of the Peace, who shall hold their offices, except as otherwise provided in this Constitution, for the term of two years. Justices Courts shall have such original jurisdiction within their respective counties as may be prescribed by law, except as in this Constitution otherwise provided; Provided that they shall not have jurisdiction in any case where the debt, damage, claim or value of the property involved exceeds the sum of three hundred dollars.

There being no amendments to section 20, the Clerk read section 21 as follows: "Section 21. Justices Courts shall not have jurisdiction in any case involving the title or right of possession of real property, nor in cases of divorce, nor for annulment of marriage, nor in cases in equity; nor shall they have power to issue writs of habeas corpus, mandamus, certiorari, quo warranto, injunction or prohibition, nor the power of naturalization; nor shall they have jurisdiction in cases of felony, except as examining courts; nor shall criminal cases in said courts be prosecuted by indictments; but said courts shall have such jurisdiction in criminal matters, not of the grade of felony, as may be provided by law; and shall also have concurrent jurisdiction with the District Court, in cases of forcible entry and unlawful detainer."

There being no amendments to section 21, the Clerk read section 22, as follows: "Section 22. Justices Courts shall always be open for the transaction of business, except on legal holidays and non-judicial days."

There being no amendments to section 22, the Clerk read section 23, as follows: "Section 23. Appeals shall be allowed from Justices Courts, in all cases, to the District Courts, in such manner and under such regulations as may be prescribed by law.

There being no amendments to section 23, the Clerk read section 24, as follows: "Section 24. The Legislative Assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to time, who shall have jurisdiction in all cases arising under the ordinances of such cities and towns respectively; such police magistrates may also be constituted ex-officio justices of the peace for their respective counties."

There being no amendments to section 24, the Clerk read section 25, as follows: "Section 25. The Supreme and District Courts shall be courts of record."

There being no amendments to section 25, the Clerk read section 26, as follows: "Section 26. All laws relating to courts shall be general, and of uniform operation throughout the State, and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, shall be uniform."

There being no amendments to section 26, the Clerk read section 27, as follows: "Section 27. The style of all processes shall be 'The State of Montana' and all prosecutions shall be conducted in the name and by the authority of the same"

There being no amendments to section 27, the Clerk read section 28, as follows. "Section 28 There shall be but one form of Civil Action, and law and equity may be administered in the same action."

There being no amendments to section 28, the Clerk read section 29, as follows: "Section 29. The Justices of the Supreme Court and the Judges of the District Courts shall each be paid quarterly a salary, which shall not be increased or diminished during the term for which they shall have been elected. The salaries of the Justices of the Supreme Court shall be paid by the State. One-half of the salary of each district judge shall be paid by the State, and the other half shall be paid by the county, where only one county is included in a Judicial District; and where more than one county is included in a Judicial District, the said other half of said salary shall be paid by the counties included in said district, in proportion to the amount of assessable property in each of such counties according to the last general assessment for taxation. Until otherwise provided by law, Justices of the Supreme Court shall be paid a salary of five thousand dollars per annum each. Until otherwise provided by law, the salaries of the several District Judges shall be as follows: That of the Judges of the First, Second and Third Districts, Four Thousand Dollars per annum each. That of the Judges of the Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, Eleventh and Twelfth Districts, Three Thousand Dollars per annum each. And that of the Judge of the Ninth District Thirty-five hundred dollars per annum."

Mr. Middleton of Custer sent up an amendment.

The President: The gentleman from Custer offers to amend section 29 by striking out the word "four" in line 9 thereof as amended in the Committee of the Whole, and inserting in lieu thereof the word "five."

The motion was seconded.

Mr. Collins, of Cascade: I move the previous question.

The President: It is moved and seconded that the amendment offered by the gentleman from Custer be adopted. The question before the Convention now is, shall the main question be now put?

Mr. Rickards, of Silver Bow: I arise for information. If the main question is put, does that preclude the possibility of this amendment being offered?

The President: No sir. The amendment has been previously offered.

Mr. Middleton, of Custer: The effect of that amendment would be to give five thousand dollars a year to the Supreme Judges.

The Chair put the question on the motion of the gentleman from Cascade and the same was declared carried.

The Chair put the question on the amendment of the gentleman from Custer.

The ayes and noes were demanded.

The vote stood as follows:

Ayes—Bickford, Brazleton, Burleigh, Cooper, Craven, Dixon, Durfee, Gibson, Gillette, Goddard, Hartman, Hatch, Kennedy, Knippenberg, Knowles, Mayger, Middleton, Muth, Myers, Ramsdell, Reek, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R.; Whitehill, Winston, Mr. President—30.

Nays—Aiken, Breen, Brown, Buford, Burns, A. F.; Burns, A. J.; Burns, Edward; Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Courtney, Dyer, Eaton, Gaylord, Graves, Haskell, Hershfield, Hickman, Hobson, Hogan, Joy, Joyes, Kanouse, Kohrs, Loud, Maginnis, Marrion, Marshall, Mitchell, Parberry, Toole, Jos K.; Warren, Watson, Witter—39.

Absent: Bullard, Field, Hammond, Luce, McAdow, Webster—6.

The motion to amend was lost.

Mr. Craven, of Lewis & Clarke: I have a second amendment which I will send up. I move its adoption.

The President: The gentleman from Lewis & Clarke (Mr. Craven) offers the following: Amend section 29 by striking out on line........ the words "thirty-five hundred dollars" and inserting in lieu thereof "four thousand dollars."

The motion was seconded.

Mr. Joyes, of Jefferson: I demand the ayes and noes.

The President: The question now is upon the amendment offered by the gentleman from Lewis & Clarke. There is another amendment offered by the gentleman from Deer Lodge (Mr. Whitehill)—"until otherwise provided by law the salaries of the Supreme Judges shall be four thousand dollars."

Mr. Whitehill, of Deer Lodge: As it is now it is fixed irrevocably—if there should be a desire to increase the salaries it would require a constitutional amendment.

Mr. Maginnis, of Lewis & Clarke. "It shall not be increased or diminished during the term for which they shall be elected."

The President: The question now before the Convention upon which the ayes and noes will be called is upon the amendment of the gentleman from Lewis & Clarke (Mr. Craven) to strike out the words "thirty-five hundred dollars" and insert "four thousand dollars."

The Clerk called the roll.

During the call of the roll, the Clerk was interrupted by Mr. Eaton of Park, who said: Mr. President, I arise to a point of order. Our rules are that no person shall vote upon any proposition in which he is personally interested. I believe the lawyers are directly interested in this measure, and I think none of them should have their names called. (Laughter)

Mr. Bickford, of Missoula: On the suggestion of the gentleman from Park I desire to be xecused from voting on the proposition.

The President: According to the rules anyone desiring to be excused from voting will have to make that excuse before the roll is called.

The Chair announced the vote as follows:

Ayes—Brazleton, Cooper, Craven, Dixon, Durfee, Gibson, Gillette, Goddard, Hartman, Hatch, Joy, Kennedy, Knippenberg, Knowles, Mayger, Middleton, Muth, Myers, Reek, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Whitehill, Winston, Mr. President—27.

Nays—Aiken, Bickford, Breen, Brown, Buford, Burleigh, Burns, A. F.; Burns, A. J.; Burns, E.; Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Courtney, Dyer, Eaton, Gaylord, Graves, Haskell, Hershfield, Hickman, Hobson, Hogan, Joyes, Kanouse, Kohrs, Loud, Maginnis, Marrion, Marshall, Mitchell, Parberry, Ramsdell, Robinson, Toole, Jos. K.; Toole, J. R.; Warren, Watson, Witter—42.

Absent: Bullard, Field, Hammond, Luce, McAdow, Webster—6.

The amendment was declared lost.

Mr. Joy, of Park: I would like to enquire what was done with the amendment of the gentleman from Deer Lodge (Mr. Whitehill). I did not hear that put.

The President: That amendment is next in order. The gentleman from Deer Lodge (Mr. Whitehill) moves to amend section 29 by inserting the words—the motion does not say where—"until otherwise provided by law the salaries of the said judges shall be four thousand dollars."

Mr. Bickford, of Missoula: I call the attention of the Convention to the fact that at the end of line 8 the same words occur—"until otherwise provided by law the judges of the Supreme court" &c.

The President: That was stricken out in the Committee of the Whole and the amendment adopted.

The amendment of the gentleman from Deer Lodge was seconded.

The Chair stated the question.

Mr. Joyes, of Jefferson: That's the motion we just voted on.

Mr. Robinson, of Deer Lodge: We voted on that proposition.

Mr. Maginnis, of Lewis & Clarke: The gentleman from Deer Lodge, as I understand, virtually moves to restore the words stricken out in the Committee of the Whole.

Mr. Whitehill, of Deer Lodge: That's all.

The Chair put the question on the motion of the gentleman from Deer Lodge and the same was declared carried.

The President: Are there any further amendments to be offered to section 29? If not, the Clerk will proceed to read section 30.

Mr. Stapleton, of Silver Bow: I desire to call the attention of the Convention to section 19 that was passed over. I think we have made a mistake. It reads in this way: "There shall be elected at the general election in each county of the state one county attorney whose qualifications shall be the same as are required for judges of the district courts except that he need not be over twenty-one years of age." Now, I submit that according to that, if he was ten years old he might be elected to the office of county attorney, or twelve or thirteen or any other age. I desire to submit an amendment to that.

The President: If there be no objection the amendment offered by the gentleman from Silver Bow will be entertained. The gentleman (Mr. Stapleton) offers to amend section 19 by striking out the words "need not in line 3, and inserting after word "be" the words "must be".

The motion was seconded.

Mr. Knowles, of Silver Bow: Does that amendment contemplate that he must be twenty-one years of age and that he cannot be any other age? (Laughter)

Mr. Stapleton, of Silver Bow: I think the word "shall" would be a better word than "must."

The President: The section will read then "There shall be elected at the general election in each county in the state, one county attorney, whose qualifications shall be the same as are required for judges of the district courts, except that he shall be over twenty-one years of age."

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Stapleton) and the same was declared carried.

Mr. Hickman, of Madison: Mr. President, before proceeding to section 30, I would like to call the attention of the Convention to section 29. There will be a conflict between that section and section 30.

Mr. Maginnis, of Lewis & Clarke: There is no necessary conflict.

Mr. Winston of Deer Lodge called for the reading of section 29.

The Clerk read section 29.

There being no further amendments to section 29, the Clerk read section 30 as follows: "Section 30. No judge of the Supreme Court or District Court shall accept or receive any compensation, fee, perquisite or emolument for or on account of his office in any form whatever, except the salary provided by law."

There being no amendments to section 30, the Clerk read section 31 as follows: "Section 31. No Judge, or Clerk of the Supreme Court, or of any District Court, shall act or practice as an Attorney, or Counsellor at Law in any court of this State during his continuance in office."

There being no amendments to section 31, the Clerk read section 32, as follows: "Section 32. The Legislative Assembly may provide for the publication of decisions and opinions of the Supreme Court."

There being no amendments to section 32, the Clerk read section 33, as follows: "Section 33. All officers provided for in this article, excepting judges of the Supreme Court, who shall reside within the State, shall respectively reside during their term of office in the District, County, Township, Precinct, City or Town for which they may be elected or appointed."

There being no amendments to section 33, the clerk read section 34, as follows: "Section 34. Vacancies in the office of the Supreme or District Court or Clerk of the Supreme Court shall be filled by appointment by the Governor of the state, and vacancies in the office of County Attorney, or Clerk of the District Court and Justices of the Peace shall be filled by appointment by the Board of County Commissioners of the County where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next general election, and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected."

There being no amendments to section 34 the Clerk read section 35, as follows: "Section 35. No Justice of the Supreme Court or District Judge shall hold any other public office while he remains in the office to which he has been elected or appointed."

There being no amendments to section 35 the Clerk read section 36, as follows: "Section 36. A cause in the District Court may be tried by a Judge pro tempore who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the cause; and in such case any order, judgment, or decree, made or rendered therein by such Judge pro tempore, shall have the same force and effect as if made or rendered by the court with the regular Judge presiding."

There being no amendments to section 36, the Clerk read section 37, as follows: "Section 37. Any Judicial officer who shall voluntarily absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office."

Mr. Warren, of Silver Bow: The word "voluntarily" as read by the Clerk was stricken out this afternoon. The word as suggested by the gentleman from Custer was voted down.

Mr. Maginnis, of Lewis & Clarke: I understand it the other way, that the word "voluntarily" was put in.

Mr. Robinson, of Deer Lodge: It was stricken out.

Mr. Maginnis, of Lewis & Clarke: I stand corrected then.

Mr. Burleigh, of Custer: I move the adoption of Proposition 21 with the amendments.

Mr. Middleton, of Custer: Mr. President, if the gentleman will withdraw the motion for a moment, I have an amendment to Section 30.

The President: The gentleman from Custer (Mr. Middleton) offers to amend section 30 after the word "salary" in line 3 by inserting the following words "and such mileage as may be."

Mr. Middleton, of Custer: If I may have a moment to explain, there seems to be a clause of limitation in section 30 limiting the Legislature to the matter of such salaries as it may fix, and tying its hands as to the matter of allowing mileage notwithstanding the amendment as offered by Gov. Carpenter to the section before. My amendment would make it read "No Judge of the Supreme or District Courts shall accept or receive any compensation, fee, perquisite or emolument for or on account of his office in any form whatever except the salary and such mileage as may be provided by law."

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer (Mr. Middleton) and the same was declared lost.

Mr. Burleigh, of Custer: I now renew my motion on the adoption of Proposition 21 as amended.

The President: There is a new section offered by the gentleman from Meagher (Mr. Parberry) which reads as follows: "There shall be no divorce granted by the courts of Montana except where the cause for divorce has occurred in this state when both parties to the suit are—" (interrupted)

Mr. Burleigh, of Custer: I arise to the point of order that it is not in order to introduce an amendment at this stage of the proceedings.

The President: The Chair rules that it is in order. Is there a second to the motion?

The motion was seconded.

The President (reading): "There shall be no divorce granted by the courts of Montana except where the cause for divorce has occurred in this state, and when both parties to the suit are present in court." It is moved and seconded that this section be added to File 21.

Mr. Parberry, of Meagher: My object in introducing that section is simply this. I have listened with a great deal of satisfaction to the able arguments adduced by the honorable gentleman from Lewis & Clarke (Mr. Toole) in regard to the witnesses being brought face to face with the accused. In this matter I would say that it probably belongs more properly to the Legislature than to this convention, but for twenty years we have been legislating, and I see no such provision as that on our statute books. It is a fact well known to everybody here that it has been more than once in this Territory that men have left their wives in other states and in other nations and have come to this Territory and have brought any accusation against their wives that they saw fit. Now, the wife has no opportunity of coming here, probably no financial means, and knows nothing about a suit. Now, I think it is high time, inasmuch as they are not allowed to vote and they rely upon us to protect them by passing such laws as will give them protection—it is nothing but right that a female should have the same right that a male has to protection in this case. A man has no right to come from Ohio, Kentucky or New York and leave his wife and family there and bring any accusation against her that he sees fit, and when she has no opportunity of defending herself, and probably never hear of it. And I say that inasmuch as the Legislature has failed to recognize this matter in all of its legislation, it is nothing but right we should incorporate it in our constitution.

Mr. Stapleton, of Silver Bow: I would like to have the proposed section read again.

The Clerk read the same.

Mr. Stapleton, of Silver Bow: I hope that will not prevail,. I believe that it would be much better to leave it to the Legislature than take it up in this Convention. It is surely a matter of pure legislation. The Legislature is able to take care of its own affairs, and I can see that there may be cases where great injustice might be done by a thing of that kind, for instance, where the husband would desert his wife in some state or where a wife would desert her husband and the deserted party came here afterwards that would exclude them entirely from ever getting a divorce. because you can never get them into court, and there is no way of getting them into court if they do not desire to come. There would have to be personal service or publication of notice, and in either case the parties are not bound to come into court. Under that condition of affairs it would be impossible to procure a divorce. If a man should desert his wife in Washington Territory and he should never return to her and she should leave her home in Washington to reside in Montana it would be impossible for her to ever get a divorce, and that would surely be very wrong. If a man in Idaho should be cruel to his wife and leave her and she would come here and make this her home, she would have no redress whatever. She might commence her suit and have publication of summons, but unless he came into court, according to this section, she would be unable to get a divorce I know a great many private divorces are obtained but I think this is going to the other extreme, and I think it should be left to the Legislature.

Mr. Callaway, of Madison: I have had considerable practice in matters of divorce, and I think the object of the gentleman's section as proposed in this case is about right, but it certainly would be a hardship in one respect, and that is wherein you would require both parties to be in court. I therefore move to amend the proposition by striking out all of the section after the word "state"

The motion was seconded.

The President: It is moved and seconded that the amendment offered by the gentleman from Meagher be amended by striking out all of the words of that portion of the amendment after the word "state." The Clerk will read the amendment as proposed to be amended.

The Clerk read the same.

Mr. Maginnis, of Lewis & Clarke: I will call the attention of the Convention to the fact that if there are two people in this State inclined to have a cause for divorce all they would have to do would be to go outside of it and go scot free.

Mr. Robinson, of Deer Lodge: I trust this Convention will vote the whole proposition and amendment down. From the way the Convention is swinging in certain matters I would be rather inclined to favor the proposition shown me a moment ago by a legal gentleman from Lewis & Clarke County providing that there shall be no legislative assemblies in the State of Montana whatever, but that this Constitutional Convention shall meet biennially. It seems to me to be assuming the functions of a Legislative Assembly, and legislating everything out of sight. Now, in examining a distinguished authority—that is to say, the only work in the Unitel Sattes on that proposition—Mr. Jamieson, a distinguished lawyer of Chicago,, on constitutional conventions, where he quotes authorities and lays it down that a constitutional convention has no power to legislate, that work belongs to the legislative branch of a government entirely, and should not be brolght up in a constitutional convention, and whatever the courts declare legislation in the work of the constitutional convention the courts will strike that out. Now, then, there are many questions that it is difficult to determine whether they fall within the province of the constitution or are legislation, but wherever they do, and they reach the courts, the courts will declare them void, and that the convention has no power to enter upon such ground. Now, then, this proposition that is before this convention at the present time appears to me clearly and unmistakably as falling within the line of legislation. A divorce is purely an equitable proceeding and it belongs to the powers of courts of equity, and it belongs to the Legislature to prescribe for what cause divorces shall be granted. As to the residence of the parties and everything of that character, it is peculiarly within the province of the Legislature. That being the case the proposition with the amendments is something beyond our province and should be voted down.

Mr. Conrad sent up a substitute for the amendment.

The President: The gentleman from Choteau (Mr. Conrad) moves to amend by substituting the following: That no divorce shall be granted on the ground of desertion unless said desertion actually occurs in the state of Montana or in the Territory before it became a state.

The motion was seconded.

Mr. Hartman, of Gallatin: I move to lay the original proposition and both amendments on the table.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Gallatin Mr. Hartman) and the same was declared carried.

Mr. Maginnis, of Lewis & Clarke: I move that Proposition 21 be now adopted and become a part of the Constitution, and on this I demand the previous question.

Mr. J. K. Toole, of Lewis & Clarke: I move to suspend the rules and recommit this to the Judiciary Committee. It is full of imperfections brought about by indiscriminate amendments, and I think it ought to go back to the Committee. The chairman of the Committee will bear me out in the suggestion, I think.

Mr. Dixon, of Silver Bow: The amendments have been amended so that no one can tell what they mean; the section in relation to the Chief Justice and the section in relation to the county attorneys especially. There is one provision that says the judges shall have mileage n filing certain affidavits, and another section says they shall not have mileage under any circumstances. The only care I have about the matter is that the language and idea may be expressed in such shape that anyone reading it hereafter can form some conception of what they mean; because if there are any inconsistencies, particularly in judicial matters, and people cannot find out what is meant, the first thing they will say is that the lawyers themselves made it ambiguous in order to make contentions and give them a chance to have lawsuits. I therefore would like to have an opportunity to put the amendments in at least intelligible shape.

The President: The question is upon the proposition to recommit to the Judiciary Committee.

Mr. Burleigh, of Custer: I think the motion was on the adoption of the previous question.

Mr. Maginnis, of Lewis & Clarke: That motion was withdrawn.

Mr. Burleigh, of Custer: I renew it.

Mr. Robinson, of Deer Lodge: I thoroughly endorse the views of the gentleman from Silver Bow (Mr. Dixon) and the mover of this proposition, the gentleman from Lewis & Clarke (Mr. Toole). There has crept into this a lot of nonsensical verbiage that has destroyed the original matters so thoroughly and well digested and considered by the Judiciary Committee. It has been done thoughtlessly by men who have had less experience, by men who have given it less thought than the Judiciary Committee did, and it has placed the whole matter in a position where I think it ought to go to the Judiciary Committee to be corrected.

Mr. Collins, of Cascade: I move an amendment to that, that it be recommitted to the Judiciary Committee with instructions to amend as the views of the Convention indicate, and it is understood that there shall be no new matter introduced into the article.

The amendment was seconded.

Mr. J. K. Toole, of Lewis & Clarke: I accept that amendment.

Mr. Maginnis, of Lewis & Clarke: I would ask that when the Judiciary Committee return it that they report if it will be subject to go again through the Committee of the Whole and through all the processes we have put it through today. I think it would have to take that course unless the rules were suspended.

Mr. Rickards, of Silver Bow: It does seem to me that it is well for us to stop a moment and consider whether in this matter we are establishing a precedent that we can follow. Now, I do not wish to speak disrespectfully, but why should the Committee on Judiciary have any more rights or privileges than any other committee in this body, and if, after considering a proposition of this kind in the Committee of the Whole, it comes up on final passage and a motion to recommit prevails, why should not any committee ask the same privilege? Now, I think the principle wrong, and I shall vote against the proposition to recommitt this committee.

Mr. Maginnis, of Lewis & Clarke: If the proposition is merely to correct the language, why, then, let it go like any other proposition from this Convention to the committee on phraseology and revision, and when it finally comes up before the Convention, the Convention can act upon it. I undertake to say if the Convention adopts this amendment that every other committee whose propositions may be unshaped by amendments will want the same privilege, and we will stay here till snow flies in January before we form a constitution.

Mr. J. K. Toole, of Lewis & Clarke: Mr. President, we had better stay here until snow flies if that is necessary to adopt a constitution that is intelligible. It seems to be the judgment of the chairman of the Judiciary Committee that that is the situation so far as some of these articles are concerned, and I think he is entitled to some consideration in matters of this kind.

Mr. J. R. Toole of Deer Lodge: I have kept out of this discussion all day, because I thought it was in the hands of good people—people competent to manage it. I desire to say one word now. I followed those amendments with a good deal of agony, I might say, and I can see now that there are some imperfections so glaringly inconsistent that a man can see them with his eyes shut; one, notably, where the chairman of that committee states that one section provides that there shall be mileage under certain conditions and another provides that there shall be no mileage under any circumstances.

Mr. Maginnis of Lewis & Clarke: I would like to have the gentleman tell me where those two sections are in the report?

Mr. J. R. Toole of Deer Lodge: Sections 29 and 30.

Mr. Maginnis of Lewis & Clarke: There is nothing of the kind.

Mr. J. R. Toole of Deer Lodge. I have not got the amendments here, Mr. President; but section 29 was previously offered by Gov. Carpenter.

Mr. Maginnis of Lewis & Clarke: The section proposed by Gov. Carpenter does not provide that mileage shall be given to any officer. There is no such provision adopted by the convention.

Mr. J. R. Toole of Deer Lodge: If permitted, I will say this much: That I am willing to admit that the men who have come here—business men and men following other avocations in life—are not competent to take this thing up after it has been passed by sixteen of the legal lights of the Territory and men who are competent and should be competent by reason of a life-long training upon matters of this kind, and to take a thing from their hands, hash it and rehash it and then let it go into the constitution. I believe that when the constitution comes to be incorporated it will be found there are inconsistencies in it, and I think it is proper and right we should defer somewhat to these gentlemen who are qualified by reason of their intelligence and by reason of their positions at the bar—positions that require brains, intelligence and qualifications such as make first class men—honest, honorable, straightforward and intelligent people. I believe they are better qualified, particularly in relation to matters concerning the judiciary, than others. I say it ought to be referred to them. and if it comes back here again, if I get a chance, I shall move it be adopted without debate.

Mr. Hogan of Silver Bow: In relation to this matter, I would say I do not favor the recommitment of it, and in my judgment I do not see that any of those propositions do conflict, as stated by these gentlemen on the floor. I do not get up here to pretend to be a judge of the law at all, but I think I can understand the English language. I differ with my friend from Deer Lodge (Mr. Toole) when he says this was hashed and rehashed. I do not think there were any amendments offered by any one except those whose profession is that of lawyers, and I think perhaps some of those gentlemen understood why they were offering the amendments. I do not get up here to discuss the legality of it, but I do say that those two sections which are said to be conflicting are not conflicting, and I certainly do not favor the recommitment of this proposition. If you recommit to this committee you have a right to recommit to any committee.

Mr. Maginnis of Lewis & Clarke: I have the most profound regard, as every one has, for the chairman of the Judiciary Committee, and I would be glad to submit this to the Judiciary Committee; but we cannot do what the gentleman from Deer Lodge county proposes to do, to place this in the hands of the committee. There is no rule that you can adopt that wont make it subject to the decision of the majority of this convention; and indeed that is what the majority of this convenion, fit or unfit, were sent here for. I say this without any feeling, because on every vote, with the exception of the reduction in salaries, I have voted to sustain the report as it came from the hands of the Judiciary Committee. But I am satisfied, and the only reason I enter my protest is, that it will only result in delay and still not do any sort of good.

Mr. Dixon of Silver Bow: I just desire to say a word. If the gentleman from Silver Bow, or any other gentleman upon this floor, thinks that I have, or that any other member of the judiciary committee has, any particular pride in having this report adopted, he is entirely mistaken There have been some amendments offered of which I do not entirely approve, but that is another thing. The only object I have in relation to this matter is not to sustain the report of the Judiciary Committee. Whatever compliments may have been paid to them by gentlemen on this floor, I can say for them that they do not claim any superior wisdom in this convention, nor do they claim any favors of this convention; and if gentlemen are willing to adopt this report as it stands, all I wish to do is to disclaim on the part of myself and my friends the responsibility of it; and I certainly shall reserve for myself the privilege of voting against an incomplete, contradictory and entirely unsatisfactory article in the constitution. My only desire was to have this recommitted in order that it might be put in shape; that was all. If the committee are able to get, from these amendments, at what the intention of the convention was, I shall certainly be very glad to get at it. I have no feeling whatever about it. I want the majority of the convention to rule; but I want to say that if this matter is placed on its final passage now, so far as I am concerned, I shall vote against it.

Mr. Burleigh of Custer: I desire to make a suggestion here which seems to me will let us out of all this trouble and save time; and that is, that we do not take a final vote upon the adoption of this proposition to-night, but that the convention adjourn and give an opportunity for gentlemen to-morrow morning, after having examined the matter, to come in here and suggest such amendments as may be necessary to remove any apparent ambiguity here in the different sections of this bill. It may be done, it seems to me, without referring the matter to the committee again. It will save a day or two of time, it will save going over it again in the committee of the whole and going over it again in the convention, and I agree fully with my friend, Mr. Maginnis, that there is no other way to get it before the convention if we recommit it; and it seems to me, if we let the matter rest until tomorrow for the chairman of the Judiciary Committee and the honorable gentleman from Lewis & Clarke to come here and make such suggestions by way of amendments as may be necessary, that we can then acquiesce in the amendments that are suggested, make the proposition all right so that there will be no inconsistencies in it, and take it up and pass it; and I therefore make that suggestion, and that the convention do now adjourn.

Mr. J. K. Toole of Lewis & Clarke: I am willing to accept the amendment. I think that will answer the purpose. There is no sort of personal feeling about this matter. We simply desire to put this instrument in some proper shape. I wish the gentlemen of the convention to feel some just pride, especially if it is done properly. It is the charter of liberties of the people of this State. It is not like a political platform, made by a political convention, to be disregarded as soon as promulgated; but it remains there permanently just exactly as we adopt it. Therefore we ought to be very particular about it, especially where defects and imperfections have been called to the attention of the convention.

Mr Callaway of Madison. We are here, as I understand it, to make a constitution for the State of Montana. This is not ordinary legislation. The child unborn, I hope, will be sitting in the legislature of this State when this constitution will still be in force in Montana, unamended; and I do not care what committee it may be, if they have not perfected their work, or if the convention so amends it as to confuse it, I would like to see that matter referred to the committee for revision.

The Chair then put the question on the motion on the reference of said proposition to the judiciary committee for the purpose of reporting back any necessary amendments, and a vote being taken, the same was declared carried.

Mr. Burleigh of Custer renewed his motion to adjourn.

The motion was seconded.

The chair put the question on the said motion to adjourn, and a vote being taken, the same was declared carried.

The convention adjourned until Thursday morning, July 25th, 1889; at 10 A M.

SEVENTEENTH DAY

Thursday Morning, July 25th, 1889.

The Convention was called to order by the President at 10 A. M.

The clerk called the roll.

Mr Craven of Lewis & Clarke: Mr Cauby asked to be excused for the day. He is unavoidably detained.

The President: The gentleman will be excused if there be no objection.

The chaplain offered prayer.

The clerk read the journal of the previous day.

The President: Under the head of General Orders, the convention may proceed to the consideration of the General File. What is the pleasure of the convention?

Mr. Hartman of Gallatin: I move that the convention do now resolve itself into a Committee of the Whole for the consideration of Proposition No. 14, General File No. 12.

The motion was seconded.

The chair stated the motion.

Mr. Robinson of Deer Lodge: Mr. President, I have no objection to the convention going into the Committee of the Whole on any proposition, provided there is any use in so doing, or unless there is some positive rule of this convention requiring it—and I do not understand that there is any rule requiring that these proceedings shall be submitted to a Committee of the Whole Unfortunately, the way we are situated, the rules of this convention and the action of the convention, are in violation of what I have always understood to be the rules of deliberative bodies; that is, that a matter is submitted to a committee of the whole for amendments, and that when the committee of the whole has acted upon it and returned it to the body, then in that body the only action that can be taken on it under all the rules I have read, is to adopt the report of the Committee of the Whole, or reject it. Now, our rules as incorporated here and acted upon are in violation of that principle, and in the committee of the whole we have gone over these diffeent propositions as the committee reported them. With all these amendments, these propositions have gone back into the convention, and we have traveled over the same ground again and used up double time, with the members paying no regard or attention whatever to the action of the Committee of the Whole It seems to me that double action upon these matters, so far as amendments are concerned, is useless and a waste of time; and unless there is some positive rule requiring us to go into a committee of the whole, I do not see any use of it, because these amendments all go into the body of the convention, and it seems a waste of time.

The President: The chair would state that according to rule 26 all propositions and resolutions of the convention shall be submitted to a Committee of the Whole.

Mr. Robinson of Deer Lodge: If that is the case, then it is useless to oppose going into the Committee of the Whole.

The Chair put the question on the motion of the gentleman from Gallatin (Mr. Hartman) that the convention resolve itself into committee of the whole, and a vote being taken, the same was declared carried.

The President called Mr. Cooper of Gallatin to the chair.

IN COMMITTEE OF THE WHOLE.

Mr. Cooper of Gallatin in the chair.

The committee was called to order.

Mr. Kennedy of Missoula: Mr. Chairman, I move that we take up Proposition No. 14, General File No. 12.

The motion was seconded.

The chair put the question on the said motion, and a vote being taken, the same was declared carried.

The clerk read Section 1 of Proposition No. 14, as follows:

Proposition No. 14.

Article on Rights of Suffrage and Qualifications to Hold Office.

Section 1. All elections by the people shall be by ballot.

There being no amendments to Section 1, the clerk read section 2, as follows:

Section 2. Every male person over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all the general elections; 1. He shall be a citizen of the United States. 2. He shall have resided in the state one year immediately preceding the election at which he offers to vote, and in the county, town or precinct such time as may be prescribed by law.

Mr. Bickford of Missoula: I desire to offer a substitute for Section 2.

Mr. Hartman of Gallatin: I desire to offer the following amendment.

The chairman. The gentleman from Missoula offers the following amendment which the clerk will read.

Mr. Reek of Deer Lodge: I would like to ask if there is not a resolution on file to be considered with this section, offered by the gentleman from Park.

The Chairman: What is the number of the resolution?

Mr. Joy of Park: Resolution No. 12.

Mr. Eaton of Park: Mr. Chairman, I move that Proposition No. 14 be considered, and that subsequent to such consideration, we take up any other proposition on file pertainng to this subject.

There being no second to the motion of the gentleman from Park (Mr. Eaton), the clerk read the substitute offered by Mr. Bickford of Missoula, as follows:

"In all elections not otherwise provided for in this constitution, every male citizen of the United States, or those who have declared their intention to become such, of the age of twenty-one years, who shall have resided in this State during the six months immediately preceding such election. shall be entitled to vote. Provided no idiot, or insane person shall be entitled to the rights or privileges of an elector. The rights and privileges of an elector shall be forfeited by a conviction for any crime which is punishable by imprisonment in the penitentiary. The legislature shall have power to confer upon women the rights and privileges of electors to vote in any or all elections."

Mr. Joy of Park: Mr. Chairman, I would like to hear Resolution No. 12 read.

The clerk read the amendment offered by Mr. Hartman of Gallatin to said section, as follows: After the word "law" on line 5 of said section 2, insert: "And he shall be able to read and write the English language. Provided that nothing in this constitution contained shall be construed to deprive any person of the right to vote who has such right under existing laws of this Territory at the time of the adoption of this constitution."

Mr. Breen of Jefferson: I move the adoption of the amendment.

The motion was seconded.

Mr. Bickford of Missoula: Mr. Chairman, I move the adoption of the substitute for Section 2 offered by myself.

The motion was seconded.

Mr. Marrion of Missoula sent up an amendment.

Mr. Warren of Silver Bow: I move the adoption of the amendment as presented by Mr. Hartman of Gallatin.

The motion was again seconded.

The Chairman: It is moved and seconded that the substitute offered by the gentleman from Missoula (Mr. Bickford) be adopted.

Mr. Marrion of Missoula: If my substitute is in order, I would like to have it read.

The Chairman: The gentleman's substitute is not in order.

Mr. Hartman of Gallatin: I only wish to say a few words in support of the amendment offered by myself. Now, Mr. Chairman, it occurs to me that one of the most important questions which we have to determine—(Interrupted)

Mr. Rickards of Silver Bow: I rise to a point of order. There is a resolution, as I understand, that has been offered and is on the General File with this proposition. A member of this convention has risen to his feet in his place and called for the reading of that resolution.

The Chairman: The point of order is well taken. The resolution will be read.

The Clerk read the resolution of the gentleman from Park (Mr. Joy), being Resolution No. 12, as follows:

RESOLUTION ON SUFFRAGE.

"Every male citizen of the United States above the age of twenty-one years, who can read and write the English language and who has never been convicted of treason or felony, and who shall have resided in this State one year and in the city, county or district where he may offer to vote for six months next prior to any election, and no other person, shall have the right to vote in this State. Provided, That nothing herein shall disfranchise any person who was a qualified voter at the time of the adoption of this constitution."

Mr. Hartman of Gallatin: There does not seem to be any material difference, Mr. Chairman, between the resolution offered by the gentleman from Park (Mr. Joy), and the amendment offered by myself. The only difference is, that I attempted to get the words in more concise form; that is all; and so far as the spirit and intention of that resolution is concerned, I am in accord with it, and there is controversy between us. But it does seem to me that this question is one of the most important ones we have to deal with, and one that we should deal with more conservatively than almost any other that comes before us. The life and health of man is absolutely dependent upon the character of the blood that courses through his veins. That is a truism. A nation's prosperity, a State's welfare, as surely depends upon the character of its citizens. Now, in our State and National governments the influence of the citizens is so much greater than it is in a despotism that the importance of this question becomes extra ordinarily prominent. Our opinions are not abstract ideas; they are forces. They become potent factors in determining governmental policies. And therefore it behooves us to see to it that those persons who take a part and help shape the policy of the government are competent to act intelligibly, and therefore I have inserted in this amendment the clause, "And who shall be able to read and write the English language." As has been well said by some member upon this floor, a vote is but the expression of an opinion. The character of the opinion and the effect that will be given to it through the medium of that vote depends upon two qualities: first, the inherent qualities of mind and heart in the individual voter; and, second, the cultivation and direction of those qualities through the instrumentality of education. Now, the first we cannot control in the individual himself, but we can declare that unless the individual possess those qualities he shall not exercise this right. The application and cultivation of the second may be encouraged by us through wholesome legislation. The amendment operates as such an encouragement. Now, then, furthermore, I desire to say that for the purposes of our State government, of our National government, the primary objects of education are to make good citizens. I believe this problem should be solved with a view to extending the greatest liberty to the individual citizen and voter consistent with the welfare of the state, but that that proviso should be one of the most important that should enter into our considerations and deliberations; first, the safety of our institutions; for by the indiscriminate application of the right of suffrage to persons irrespective of their qualifications, we imperil not only the peace of home, the purity of families, but we menace the very foundations of government itself. I would not, if it were in my power, do an act or utter a word that would abridge the rights or privileges of a fellow man, but I do say that it behooves us as members of this convention, and as citizens of this great commonwealth, to take a stand against the scum, the criminal classes of foreign nations. I desire to say that some of our very best citizens have been born upon foreign soil. To them and their kind we should extend, every one of us, the right hand of fellowship; but, Mr. Chairman, the United States government by no legislation at all, by reckless negligence and by failure to enforce its legislation, have opened the doors and invited to our shores the Anarchists, the Nihilists and the Socialists of foreign nations, and we have had a recent exhibition of the effect upon our civilization in the Clan na Gael organization; and I pretend to say it should be the aim and duty of every member of this convention by his vote, as far as in him lies, to say that not one of that class shall have voice or vote in the affairs of this State. I freely admit, as I have said, that very many of our better class of citizens were born upon foreign soil, but they have not come here alone; the same ships that brought them to the land of liberty have brought with them these fiends to destroy liberty. And therefore it becomes our duty at this time to place a safeguard against such class of voters. I believe that the success of this state depends in a large degree upon the character of its citizens. I have therefore introduced the educational clause in it. The other clause, it seems to me, provides for the maintenance of all of the rights possessed by voters at this time, provided that nothing in this constitution contained shall be construed to deprive any person of the right to vote who has such right under existing laws of this territory at the time of the adoption of the constitution. I hope that the amendment will prevail.

Mr. Courtney, of Silver Bow: Mr. President, after listening to the eloquent address delivered by the gentleman, I am free to admit it is audacious on my part to address this assembly. I shall make no effort, however, to make a speech, but I feel constrained by a feeling that pervades me to make a protest against the arguments of the gentleman. I think, notwithstanding the eloquence of that address that it lacks force. I fail to see one solitary argument in it. Now, the very people he claims that are dangerous to our civilization, I think you will all agree with me, are pretty well educated people, and I fail to know of any part of our country where harm has ever come to the country by illiterate persons having the right of suffrage. Now, I believe in the most unlimited liberty that is compatible with the welfare of our country, and I really think, sir, that the number of common schools in our country today is such that we need never be very apprehensive of illiteracy being so great in this country as to overcome the influences of education. I am opposed to the substitute on that ground. I am opposed to it because it is not in the spirit of the times. Now, I really think that the indication of the times is for more liberty in behalf of the people rather than a restriction of the present liberty which they enjoy. If I thought that there was any danger to befall Montana or that Montana's welfare would be injured in any way by the adoption of the section as introduced by the committee, I should certainly withdraw my vote; but, notwithstanding the eloquence of the gentleman, I fail to feel any apprehension whatever on that point. I think it would be decidedly wrong at this day for us to adopt that amendment. The section as introduced by the committee meets with my approbation. As I said, the substitute of the gentleman is not in the spirit of the times. We are not afraid of the illiterate voters of this country dominating over the intelligent vote. I also think, sir, that it may possibly work a hardship in some cases. We have in various parts of this country, and possibly in Montana, men who have much interest in the welfare of the state who are unable to write their own names. They are holders of considerable property, and are just as much interested perhaps as a person who can write his name. And if we pass this substitute we would deprive such persons of the right of suffrage. I cannot understand the consistency of that. Now, I do think this, that we go a great deal more on the innate qualities of our associates and fellow men than we do upon their literary qualities or characteristics. It is not according to the degree of education they possess that we judge men. I have, at least, never so judged my fellow men, my associates in business, or the acquaintances I have met in the various paths of life; and I think so it is with this suffrage question. Some of the worst criminal classes of this country, some of the most hardened enemies our country possess are not the illiterate, but on the other hand these exceedingly sharp fellows who are well up in political trickery, and in all kinds of knavery, and all these other things that are acquired by education, and which only educated people can acquire. Now, sir, I am positively opposed to this amendment.

Mr Joy, of Park. It seems to me that the idea which the gentleman presents in favor of his own resolution bears more upon mine than upon his own Now, in the first place, upon the question of conciseness I want to call the attention of this committee to the fact that my resolution, as it stands, covers more ground and uses less words than that introduced by the gentleman from Gallatin (Mr. Hartman). I say it covers more ground, and the very ground he speaks of. The very dangers he refers to of these foreign societies, dangerous people from abroad and the criminal and other dangerous classes, is not provided for in his resolution. Now, I have said in my resolution "every male person over the age of twenty-one years who has never been convicted of treason or felony," and that has not been touched upon in any of the other resolutions. I think that is a very proper provision. That would shut out the very class of people that the gentleman from Gallatin refers to, and I trust that this resolution as offered by myself will prevail. I do not suppose that there is a member upon this floor who is more willing and even anxious that all citizens and voters of the State of Montana will be able to go to the ballot box and cast an intelligent vote, and that is all this resolution seeks to enforce. It stimulates more intelligence in our politics; it is more elevating in its tendency and effect, it disfranchises no person who is now a voter in this territory or who may be at the time of the adoption of this constitution. I know it may be urged by some upon this floor that there are men, able gentlemen, smart business men, who are unable to read and write. That I know to be true. I have had business relations with them, and I know it is true. But they are not disfranchised by the resolution. They will continue to be voters as long as they stay in Montana Now, I say that those coming from abroad will have ample time before they are allowed to vote under any circumstances —they will have ample time after they come here to become useful citizens; they will have ample time to learn to read and write their ballot. It has been suggested by the gentleman from Silver Bow (Mr. Courtney) that these dangerous people, anarchists, nihilists and socialists &c. are educated people. Now, that is true as to the leaders. Those who are the leaders of those societies are educated, beyond question, but the most of them are ignorant people, who are swayed by a handful of leaders that are educated and understand our institutions. I hope, Mr Chairman, that this proposition will prevail. This provision has been introduced into the constitution of other states, particularly in the State of Missouri, recently, and it is an advance step, I am glad to say, in that state. I am glad to say it has been introduced in both of the new states of Dakota I notice one of the tests was that the voter should be able to read the declaration of independence. That goes beyond what we expect here, and the only challenge we exact as a test will be that when a man goes to the ballot box he will be obliged to stand up there and read his ballot, if he is challenged on that ground, and further, he is obliged to take a pencil and write that ballot, if he is challenged on that ground. I am in favor of stimulating a man to cast the most intelligent vote. The voters are the masters, and the officers are simply their servants, and I say the voters should be as intelligent as their servants. Now, in view of the fact that Mountaineers have in all ages and times been noted for their courage and patriotism, I see no objection to adding intelligence to these virtues, and I trust this resolution will prevail.

Mr. Hogan, of Silver Bow· I must say that I differ somewhat from the gentleman from Gallatin (Mr. Hartman) in his ideas, and that further I think that the address he delivered to this convention was more fluent than practical. I claim that to require that qualification of a person that it is not in accordance with the requirements of a man to become a citizen of the United States. I claim that as long as you admit a person to be a citizen, that person has a right to have some say in the making of the laws of the country. Further, I claim that there are people in Montana today that cannot read and write, that cast as honest a ballot, as intelligent a ballot, as those who can read and write. My experience in that respect was this, that I have seen men that were smart and intelligent that cast their ballots for the men that paid them; and on the other hand I have seen men that could not read and write, that a man could not approach for the purpose of buying them. Now, if you go and give the right of suffrage to men who live here now who cannot read and write, it is wrong to deny it to others who come in afterwards. It is not in accordance with the liberties that are accorded to American citizens. The gentleman from Gallatin goes on to call in question the Clan ne Gael and other secret societies, which I know nothing about, but from what I can read of them, I claim there are intelligent people among those men, and some of the most respected citizens of the country are members of the Clan ne Gael Society today, according to the reports of the newspapers. This constitution has nothing to do with those societies. By depriving the people who can neither read nor write the English language of the right of suffrage you do an act that has no bearing whatever upon those societies, and that argument is entirely irrelevant to the proposition and it is only placed here before the convention for the purpose of having some influence in helping the proposition through. I certainly oppose the proposition, and think it is not right to deprive a man of his vote simply because he cannot read and write the English language. The gentleman from Park County goes on to say, "we only require of him to read the ballot; that we don't go as far as to ask him to read the declaration of independence." I claim that a man who can read and write certainly can read the declaration of independence. I certainly do not favor the amendment. I do not think it is just or right. As long as you admit a man who cannot read and write to the liberties of citizenship, you should not take away from him one of the first rights of his citizenship. There are some that do not cast an intelligent ballot while there are others that do, and if you deprive certain men from casting their ballot you certainly do wrong to them. There are honest people in that class of men who cannot read and write, and I think you will find that there are quite a number of people in Montana that can read and write and speak the English language fluently, that should never be allowed to cast a ballot.

Mr. Sargent, of Silver Bow: Mr. Chairman, an intelligent vote is the best guarantee of the perpetuity of our popular form of government, while ignorance is the bane of liberty and of all those principles of government which are so dear to the heart of every American citizen. The education sufficient at least to cover the requirements of this bill is within the reach of all, and if any man has not sufficient intelligence to learn to read and write or if he possess such intelligence and has not the inclination to learn, he is totally unfitted to exercise the functions of a free, intelligent and progressive American citizen. All such voters having no opinions of their own and being easily influenced by others are a standing menace and danger to the public welfare. This question should not arouse any partisan feeling whatever, for it is deeper, wider, higher and of infinitely more importance than the mere temporary success or failure of any particular party or parties; for parties are but the means to an end, subject to constant changes, while the principles of liberty, equality and human rights upon which our government is founded, and which it is the object of this resolution the better to preserve and defend, we trust shall live forever. Our American franchise is not a right coequal with the inherent right to life, liberty and property, but is a political privilege granted on certain conditions and within certain limitations, which conditions and limitations can be extended or curtailed in the wisdom and at the discretion of the law-making power. So that this resolution is really constitutional. It has no retroactive effect; it disfranchises no man who is now a voter; it infringes upon no man's inherent right; it works no hardship to any person; its object and its purpose is to make it possible to secure a more intelligent expression of opinion upon questions of public importance, and to throw additional safeguards around the purity of the ballot. It seems to me that it should meet the approval and receive the hearty support of every true American citizen. (Applause) And when we shall have so revised our election laws that the franchise shall include all the virtue and intelligence and exclude all the vice and ignorance of the people, we will be nearer the political millennium than any people ever before attained. If the magnificent temple of liberty which we are erecting is to be builded upon solid and enduring foundations, then I hope this bill will pass. (Applause)

Mr. Burleigh, of Custer: I have listened with a great deal of pleasure to the remarks of two gentlemen upon this floor; one is the gentleman from Gallatin County (Mr. Hartman), the other, I believe, from Silver Bow (Mr. Sargent), and while I agree with them fully in regard to the desirability of education being disseminated throughout the masses of this country, and that every voter shall be educated not only to such an extent as to be able to read and write his own name, and perhaps the declaration of independence, but in all the useful arts and sciences and mechanic arts, yet I take the thing as I find it. Such is not the condition of the American people; neither can it be for years to come. Now, I was especially delighted, yes, more than that, electrified, with the splendid dissertation of my friend from Gallatin County (Mr. Hartman) upon this subject, and when he spoke of the exercise of the right of suffrage intelligently and safely being based upon education, it occurred to me that it was moral education quite as much as intellectual. Now, take the instance of the man in Massachusetts who goes up to vote and he is challenged, and why? Because when the ticket is handed to him he cannot write his own name. What would you say to having a man of that kind rejected who had lost his right arm in the service of his country, and who had lost his left arm, and never had acquired the habit of writing with his toes? (Laughter) Would you go in and disfranchise that man because he had been out and imperilled his life on the battlefield of his country and sustained an irreparable injury? "He must not only read and write" is the language of the resolution, and I have known scores of men, so far as my recollection dates back, some years, who not only fought upon the bloody fields of the first revolution under Washington, but in the war of 1812 and 1815 under Scott, the wars of Mexico under Scott and in the late rebellion, who could not fulfill the requirements here. And those men were doing patriotic service for their country when my young friend from Gallatin county was "mewling and puking in his mother's arms," and before the gentleman from Silver Bow County had gotten rid of the necessary nether garments which go with the discomforts of infancy. I say plainly that no power in this convention nor on earth can induce me to go and record a vote against those men. He says rascals come from the old country. Well, now, those rascals that come here cannot only write their own names, but they too frequently write the names of their neighbor. (Laughter) It would need high-wrought, patriotic, down East Yankee culture to make an American citizen such as this gentleman would delight to see, and that may come perhaps just about the break of the millennial dawn. Now, I say I am opposed to this whole thing. I think the report of the committee goes quite far enough, and if the millions of pure men here who are intellectually educated and morally educated cannot stand off a few whelps who come in here to prostitute our political institutions, we had better surrender and go back into barbarious life again.

Mr. Knowles, of Silver Bow: I am opposed to this amendment. It confines the intelligence of the country to the men who shall be able to read and write in the English language. We who read and write the English language do not possess all of the intelligence that exists in this world of ours. We have intelligent Germans and intelligent Frenchmen and intelligent Scandinavians, as we are accustomed to call them, who can read and write well in their native languages, and who are intelligent people. We have today German newspapers published throughout the United States, which discuss public matters as intelligently as do our newspapers published in the English language. We have papers published in the Scandinavian language which discuss public matters well, and there are often papers published in the United States published in the French language, and these discuss public matters. Now, you wish to shut out all men who have not learned the English language as though all there was about liberty was in the English language. I agree with two of the gentlemen from my own county, who have said that the danger to American institutions today is not from men who cannot read and write. The danger to the institutions of today is that men do not feel sufficiently the responsibilities that rest upon them as American citizens. When there are found six hundred or seven hundred voters that can be purchased for the paltry sum of three dollars apiece, every one of whom can read and write the English language, I say there lies the danger. Our revolutionary sires were not an educated people, but they were lovers of liberty, and wherever you find a man imbued with liberty, with the principles of liberty, he is a patriot in this land of ours, I care not whether he can read and write or not. Reference has been made here to the anarchists. What has been said about them is true; that as a rule they are educated and well educated people; but they are a people that have grown up under the tyrants of Europe until they have come to protest against all governments. They believe that all government is a species of tyranny. They are what might be called semi-insane upon that question. But where do we find in this land of ours ignorant men banding themselves together. Nowhere. It is these men of intelligence that have visionary notions in regard to government. We have, by an amendment to the constitution of the United States, enfranchised and made voters the largest number of ignorant people that ever existed in any country. The government has not gone to pieces from that action on the part of the national government. I know that directly the national government did not make these people voters, but the effect of that amendment to the Constitution was to make them voters. And so I am opposed to this qualification here, which says that they shall read and write the English language. Men come to the United States who are advanced in years. There are a great many communities in the United States where the language of the country from which the immigrants come is still spoken. It is the language of that part of the country. You will find throughout Iowa, Illinois and Ohio and in the German selltements generally that they still speak nothing but the German language; and yet a friend of mine who fought on the side of the confederacy said it seemed to him that he saw more Germans upon the battlefields of the south than men of any other nationality. These men when it came to the question as to whether this government should be preserved went out in thousands, and I am opposed to any restriction of the kind that would narrow their rights or privileges as proposed in this bill.

Mr. J. R. Toole, Deer Lodge: The first question that presents itself to my mind in connection with this is, what is the cause, or what is the demand, or what is the present condition of circumstances that demands anything of this kind. Does the history of Montana, does our political history demand that we should enact such a clause as this in our constitution? Have the people of Montana, our citizens who have honored us by sending us here, have they been consulted? Are they a class of people that we desire to dispense with? I take it not, sir. I take it, sir, looking at the matter from a common sense point of view, in the light of our past experience, and our history, that there is no demand for anything of this kind. We have on the floor of this house two gentlemen who, since Montana had a history almost, have represented us in the highest office which it was in our power to bestow, and I take it that in this mountain country west of the Mississippi River, or east, if you will, throughout the territories, in any of its confines, there never have been men more ably and intelligently and nobly and more satisfactorily to the people of the territory represented their constituents, than these men did. And looking around in our county offices, upon every office in the gift of the people, and every office that might be in the gift of the people prospectively in our state, I ask, does the condition of affairs here demand anything of this kind? It sounds very well in theory, but does our practical experience demand this step? If we take history for it, does our history bear us out in the assertion that for the last one hundred years the tendency has been to extend the franchise instead of curtailing or limiting it? Does not the history of the world show that men have crept gradually onward in the progress of the franchise? There was a time, as was demonstrated here the other evening, when the franchise was limited to but the very few, and after a hard struggle it was extended so that men who had property qualifications were entitled to the privilege of electors, and after years the fight went on until that limitation was removed and the citizen irrespective of property qualifications was placed in possession of the ballot, and today we have the most liberal laws in relation to that matter of any nation on the face of the earth. I ask the gentlemen of this convention now, does not our history in the past eighteen years bear us out in the assertion that we are on the right track? I think we are all proud of Montana. My knowledge of the history of Montana and of the people who have administered the offices is a matter, I think, of which I in common with every other citizen of Montana may justly feel proud. We should all congratulate ourselves on the fact that all our offices from the Justices of the Peace and Constables up to the highest office have been administered honestly and conscientiously and have been filled by men who were a credit to the commonwealth. Where you permit people to come to the country here, and then make them feel in their hearts that they are not of us, that have interests that are identical with ours, and yet that may have no voice in the enactment of laws or in the machinery of government, I say that is working a hardship. I believe this resolution is not in accordance with the times I believe that the experience of the past does not bear us out in introducing anything of this kind into our constitution. I say our officers heretofore have been men of whom we might well be proud, irrespective of political color or party feeling, and I say the course we are pursuing here is the proper one. I hope this amendment will not prevail.

Mr. Maginnis, of Lewis & Clarke: Of course, it would be a grand thing if all men could be wise and virtuous and good; it would be a grand thing if all men could be educated, but I agree with the gentleman from Yellowstone in thinking that when that ideal republic exists that was so beautifully pictured by the gentleman from Silver Bow (Mr. Sargent), where all who participate in the franchise will possess these qualifications, it will exist upon those Elysian fields, upon the rivers of time where the powers of the universe will sit at the ballot box and only angels will canvass for the suffrage of their constituents. (Applause) As has been well said, this republic was founded by men who were illiterate, but who were lovers of freedom. As has been said the descendants of those people in many states of this union still do not read or write the English language. As has been said those descendants were as brave as any people in defending the rights and the honor of the country. And, Mr. Chairman, and gentlemen, it is not the ignorant people who come from abroad who threaten our institutions. The gentleman from Park was mistaken when he said that only the leaders of the anarchists are educated; that their followers are ignorant people. Those people come from lands where education is compulsory, and I undertake to say, and I say it without any derogation to this convention, that in the matter of reading and writing, in the study of the philosophy of government, in acquaintance with those theories upon which philosophers have advocated the establishment of governments, in the number of languages which they can read and write, not only the English, but many others, that this convention could not compare with an ordinary club of anarchists. No, Mr. Chairman, it is not that that makes good citizens. I know, sir, that there have been some ignorant people come from abroad; there have been many people who could not read or write the English language; but we must remember that it is that immigration that has made this country great; it is that immigration that is making this country great today. Compare the States that are inviting immigration from the old world; compare Wisconsin with Maine; compare Iowa with North Carolina, compare any new state whose life blood is continually reinfused by the immigration of people from the old world with any state that has no immigration, and see how the comparison stands, in prosperity, in education, in advancement, in wealth and in everything that goes to make great communities. Sir, although these people, these anarchists did violate the peace at Chicago, who were the men that stood against them, and put them down? Did you ever read the names of those policemen that were killed? Did you ever read the list of that police force that stood up and put down that anarchistic demonstration? They were nearly all foreigners; they were nearly all adopted citizens; and I undertake to say that many of those who stood up that day to defend the government and the country did not possess the qualifications of education that the anarchists did. Why, if there was any place in the world where a proposition of this kind would be unwise, it would be here. The census shows that we have the smallest percentage of illiteracy of any state or territory in the union; and I call the gentlemen here to look around among their acquaintances, and I direct their attention to one thing. The men who have made the greatest successes in this territory by their intelligence, by their will, by their character, and their force, have been men whose early opportunities were such as would scarcely bring them within the limits of this provision. I do not want to call any names, but I could call them. I know also that some of the men who have planned the greatest enterprises, built the greatest works, might perhaps be ruled out on a purely educational test if it was carried too far. Neither the greatest soldiers nor the greatest leaders or captains of industry are always the most scholarly men. Mr. President, there is another matter. In the resolution of the gentleman from Park (Mr. Joy), he would shut out everybody that was convicted of treason or felony in any other country. He ought to be careful before he does that. There are countries where treason and felony do not mean what treason and felony do in this country. That would have shut out De Kalb, that would have shut out Kosciusko, that would have shut out Kossuth, and Carl Schurtz, one of the most intelligent men of this country, and Frank Sigel, who made such a grand reputation in our wars—all these would have been deprived of the franchise if our citizens had made treason and felony in other countries a bar against being received into citizenship of America. (Applause) Gentlemen, the people of Montana are on the right course. They have governed this territory well with the qualifications of suffrage that they now have, and I trust that not on account of any beautiful theories or arguments will we advance a step in the wrong direction and narrow the rights, and the liberties and the privileges of our people. (Applause)

Mr. Breen of Jefferson: I am in favor of this clause and I hope it will pass; and more than that, if I only knew there would be but one vote registered in favor of it, that vote would be mine. I know the condition of the men of this territory and the voters of this territory, I apprehend, as well as the average man that has been around amongst them. There are some men that do not know what they are voting or who they are voting for; they have not enough intelligence if they did know, to understand the difference between principles or between men, and these men will go on election day and cast a ballot that is the equal of yours. It is not a pleasant thing to contemplate. Now it is claimed that the followers of the anarchists are ignorant. That is true; it must necessarily be true, for if they were educated, if they were able to see the folly of their ways, they would not be following the wild lead of some crazy idiot from across the ocean; and if these men were able to read and write they would not be ready to believe every word that is told them during the excitement of a compaign; they would look for the records of the men, and it would not be the best talker, but the man with the best principle, regardless of his political convictions, that would receive their ballot. Mr. Chairman, and gentleman, we have here, or we will have here in Montana, thanks to the efforts of the members of last winter's legislature, a ballot system in operation this fall which is called the Australian secret ballot system, and if it was not for this coming election and for fear that the judgment of the people would rise up in defense of Mr. Kennedy, I am willing to say that that bill would have been killed last wniter. I have seen foreman around among their men handing them a ballot and furnishing teams to take them to the polling place and saying how they should vote that ballot. I have seen that done in the territory, although I have only been five years in the territory; and if we have men that have little or no intelligence, and that will vote as their employers say, they can give them a list of names and say to the voters "take this and cross these names, or if you don't we have no use for you here"—I say that if these men have little or no intelligence they will be subject to the mercy of their employers and will not vote according to their own convictions, and it will be just the same as it is now, and the protection of the Australian Ballot System will be a farce. I say, gentlemen, give us an intelligent vote, or give us none at all. I know that we have papers edited and published in the German, in the Swedish and in different languages, but at the same time these men that are publishing these papers have the brains to print them in the English language, and I believe in building up an American and not a German or a Sweedish, or an Irish, or a Scandinavian republic. Take the United States. Our fathers, they claim, were uneducated but at the same time when they drew up the declaration of independence and the constitution of the United States, it was not the ignorant men in the thirteen colonies that sent representatives to draw up that declaration or the constitution of the United States; they were intelligent people, and they sent the very best talent they had, and it was a credit to their judgment that they did send such talent as was sent there. If these men will reside in our territory five years, or even one year, before they become voters, and if they are too lazy to learn to read the English language or write in that language, I say they are not fit to say who shall goven me or you, or that their vote or his vote shall be the equal of mine for the purpose of passing laws for my government, or any other man that is interested in the welfare of the country. For that reason I say give us that substitute, so that we shall have an intelligent qualification for voters and do away with this condition of affairs. As it is now, the average voter says "Mr. sombodyelse" or "Mr. so-and-so, told em this was a good man, and I am going to vote for him," and at the same time they do not know, and never would know his record. I admit that Montana has been well served in the interest of Montana since she has been a territory, but at the same time we do not know but what some of the men that were left at home would have served the territory of Montana just as well as those that were elected. The ignorant voter is liable to vote for a bad man as well as a good man just the same. Now I say give us an intelligent qualification and let us do away with some of the evils of our present system of elections.

Mr. Middleton of Custer: For God's sake, where are we drifting. (Laughter) It seems to me that this proposition in the resolution offered by the gentleman from Gallatin is the same thing, or practically the same thing, as the one offered by the gentleman from Park. It seems to me this proposition considered in a convention organized here for the purpose of framing a constitution for a free people one of the most preposterous propositions I ever heard of. My little knowledge of the history of these United States from its foundation down to the present time, is that we have what is known as a republican form of government, a government for the people and by the people. Now, to say, sir, that because a man cannot write and read the English language he does not belong to that class of the people that the constitution of the United States mentions, seems to me absurd. It has been well said here that a ballot, a vote, is simply an expression of opinion. Can it be possible that because a man cannot read and write the English language that he cannot express an honest, intelligent moral opinion? I say that that expression of opinion is based presumably upon, or should be based upon his moral conscience, regardless of what his qualifications are as to education or property. I presume the next provision will be to require a man to be a millionaire, and we will have a government in Montana for the aristocracy and not for the people. Why; there has been no argument advanced by the gentleman from Gallatin (Mr. Hartman) or the gentleman from Park (Mr. Joy) that can, it seems to me, indicate to the mind of any intelligent man that there are any reasons for this proposition. The gentleman who offers this resolution is an educated man, a man learned in the law. The other gentleman from Park occupies the same position. They are men from whom we would expect an intelligent expression on any proposition or principle, but I candidly believe that both of those gentlemen at this moment are acting under temporary aberration (Laughter) and I don't know but it would be wise for this convention to appoint an inquisition de lunatico inquirendo to see whehter or not it is safe for those men to be at large. (Laughter) According to my observations, some of the most intelligent people, some of the best friends I have had, some of the best business men, some of the most successful business men, were men who could not read or write the English language. Here we have a vast territory of millions of acres of arable land, sufficient to furnish farms for hundreds of thousands of people. We have mountains, and mountains of ore yet untouched and unworked. We are forming presumably a new state, and in order that it may become what we want it to be, we should certainly open the gates to every intelligent man, whether he be a German, an Irishman, a Swede, or no matter where he comes from. Why, as has been well said here, many of the most intelligent and thoroughly educated men we have in this country, some of them right here in Montana, come to this country after they have passed, perhaps, middle age, thoroughly educated in their own language, and they never do learn to read or write the English language. They have to work perhaps for a living, and they have not time nor the inclination to do that sort of thing. As has been well said also, those men read the papers; they know what is going on in this territory, in its political and in all its affairs, although they may not derive that knowledge from a perusal of matter printed in the English language. They know the history of matters and things just as well as the man who can read the primer or write his own name in the English language. It is a surprise to me that men of such intelligence should attempt to spring such a proposition as this upon this convention. I cannot believe that the intelligence of seventy-five men will ever permit any such thing to go into the constitution of the State of Montana. Why, submit a constitution to the people of this territory with that provision in it, and I will take the stump and borrow money to get a living, while I am doing it, and try my best to prevent its ever being adopted by the people of the State of Montana. It would be an outrageous thing, and I do not believe that when it came to go before the people that any intelligent, honest, upright man that believed in a republican form of government, that believed in a government by the people, for the people and of the people, would ever say that he would cast a vote to adopt that constitution. It is a fanatical idea; it is all nonsense. Why mention was made here of socialists and anarchists and the Clan ne Gaels and all that sort of thing. Study up the history of the Haymarket riot in Chicago, and you will find the most educated and intelligent men, not only at the head of that affair, but the entire body of them connected with it. Would they be octracised under this provision? No, they can vote; but a poor honest man, whom circumtstances and conditions did not permit to be born in this world where he had an opportunity of getting an education, and who has lived perhaps either in this country or some other until he is thirty or forty years of age, and comes here with a family with sufficient means to establish some little business, or perhaps open up a farm out here on the prairies—he attends to his business, he reads the papers in his own language, but he is prohibited from casting the expression of his honest, intelligent opinion upon public men and public affairs; and yet you say that the anarchistic, socialistic rascal, educated in the ways and the tricks of modern times and in the English language, as well, can go and cast his vote at the polls, and the other man shall be forever ostracised in the state of Montana. It is an outrageous thing to contemplate. It is anything but republican in idea, and I cannot believe that the intelligence of this body will ever permit such a contemptible proposition to be embodied in the constitution of the State of Montana.

Mr. Joy, of Park: The gentleman from Custer (Mr. Middleton) who has last spoken, has made one good point, and that is that it would be a good idea to appoint a commission of lunacy to examine the heads of this convention, including particularly the head of the gentleman from Custer. (Laughter and applause.)

Mr. Sargent, of Silver Bow: Three-fourths of the virtue and half of the intelligence of this country are excluded altogether from the ballot, and it excites no comment and no protest on the part of the gentleman, but he works himself into a sort of rage over this proposition. I am not profoundly impressed with the sincerity of the convictions of the gentleman who has just spoken, and although he may suggest that those who favor this substitute are proper subjects for a commission de lunatico inquirendo, I would say on their part that they have not placed themselves in the ridiculous position which he has done in saying that those who favor this proposition making a limited educational qualification necessary, which is within the reach of all, every person in the United States—that they are liable to follow it up with a millionaire qualification, which is only within the reach of few at best. I say that a proposition of that kind is an insult to the intelligence of this convention, and is an impeachment of the common sense of the man who utters it. (Applause) This provision is in the interest of education, and every man here favors education; and if a man finds it is necessary that he shall learn to read and write before he can exercise the franchise, it will be an inducement for him to do so. It really disfranchises no man. It is in the interest of good government, and I hope it will pass.

Mr. Knowles of Silver Bow: I wish to say for a friend of mine here who happens to be raised in Germany—Interrupted.

Mr. Robinson of Deer Lodge: I believe I will call for the rule requiring that no man shall speak twice on the same amendment until all the other members of the convention who wish to shall speak.

Mr. Knowles, of Silver Bow: If you try that on me you never speak twice on a question again. You have violated that rule more than any other man in the convention.

Mr. Robinson, of Deer Lodge: I call for the rule on the gentleman. Under the rule of the house no man can speak twice until all the other members have expressed their views if they so desire.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, I will ask for the reading of that rule, I do not know where it is found.

The Chairman. It does apply to the committees of the whole.

Mr. Knowles, of Silver Bow. I only wish to say this, my friend here from Deer Lodge (Mr Kohrs) estimates that there are five thousand German newspapers published in the United States; that the German population of the country read them because they can more intelligently understand American affairs published in their native language than they can in the English. A great many of these people cannot read and write in the English language, who are considered classical scholars in the German language. Now, this would disfranchise all such people as that, and I am opposed to it.

Mr. Brazleton of Jefferson· I would just like to ask these gentlemen who have so ably defended this clause if they lived in Florida instead of in Montana would they advocate the same measure

Mr. Hartman of Gallatin: Yes, I would I think it is a good thing anywhere. I want you to distinctly understand that there is no party question in it. It seems to me that if a man cannot rise on this floor and express an opinion upon matters without being charged with party feeling, that it is high time we were placing a limit on this thing. I pretend to say no man has gone into this thing with more sincerity than I have, and I have advocated it, and I believe it to be a good question.

Mr. Schmidt, of Silver Bow· I offer an amendment to the amendment of the gentleman from Park.

The Chairman: The gentleman is not in order. We are disposing of an amendment to an amendment now

Mr. Reek, of Deer Lodge. I would like to say that I have been a very good listener this morning on this question, and I have heard nothing that convinces me yet but that the resolution that has been offered by the gentleman from Park (Mr Joy) or the gentleman from Gallatin (Mr. Hartman) is a good resolution. I hope it will pass.

Mr. Craven, of Lewis & Clarke. I do not wish to engage in any extended remarks, my sentiments having been so well expressed by many of the speakers who have preceded me, but I wish to say that language, whether written or spoken, is only a medium for the transmission of ideas. I do not care about the medium, but I do stand for the quality of the idea; I do stand for patriotism, I do stand for honor, for honesty and morality. I care not how the tongue may stammer, I care not about the language which those virtues speak. I am not here today to aid the gentlemen in the erection of any barriers making a distinction between citizens who come to this country after the adoption of the constitution and those who have previously resided here. Let any man come from any foreign country he may, provided he comes with his heart full of patriotism for American institutions, and if that man be a man of honesty and morality he has my right hand of fellowship. (Applause)

Mr. Clark, of Silver Bow: I desire to ask how many amendments there are pending now to this resolution

The Chairman· The gentleman from Missoula offered an amendment. The gentleman from Gallatin offered an amendment to the amendment.

Mr Clarke of Silver Bow· I would inquire of the Chair if the amendment offered by the gentleman from Missoula was not in the form of a substitute, and that the only amendment besides that offered was by the gentleman from Park.

The Chairman· The Chair is of the opinion that the gentleman from Silver Bow is correct.

Mr. Clark of Silver Bow: Then, as I understand it, there is but one amendment offered to the printed copy. According to the rules, then, it is my opinion that the amendment offered by the gentleman from Silver Bow is in order, according to rule eighteen of Jefferson's Manual, that whenever there is a motion made to strike out and insert, which is contemplated by the substitute offered by the gentleman from Missoula, the question shall be considered as two questions for the purpose of amendment, and that portion which it is intended to strike out shall take precedence and the friends of that measure may offer amendments to it, and until they are satisfied with it, or until it is rejected, as the case may be, before the question upon striking out shall be considered, so that I believe that the amendment offered by the gentleman from Silver Bow being only the second amendment to the printed copy, as it now stands, is in order.

Mr. Eaton of Park: I desire to call attention to rule forty-one, which provides that a substitute shall be deemed an amendment and treated in all respects as such. Now, although the gentleman from Missoula offers his substitute under that name, it should, under our rules, be treated as an amendment, and the amendment of the gentleman from Gallatin should be treated as an amendment to the amendment. We now have two amendments before us, and that is all that can be admitted under parliamentary law.

Mr. Joy, of Park: I should like to ask the question whether the resolution I introduced here a number of days ago is now pending.

The Chairman: The Chair understands that the resolution offered by the gentleman from Park is being considered as a part of Section No. 2 of General File No. 12, which is now under consideration.

Mr. Hogan of Silver Bow: I would state that that is contrary to the ruling of this convention. Heretofore the report of the committee has been acted upon and treated and disposed of first. Then these propositions reported adversely have been taken up and acted upon.

Mr. Witter, of Beaverhead: Mr. Chairman I move that the Committee rise and ask leave to sit again.

Motion was seconded.

The Chair stated the motion.

Mr. Courtney, of Silver Bow: Mr. President, if this question is debatable I just wish to say this, that now, since we have discussed this question, it is the proper time to take a vote.

The Chairman: The gentleman is out of order.

Mr. Richards of Silver Bow: I offer an amendment, Mr. Chairman, that when we rise we ask for more time to consider the proposition now before us.

There being no second to said motion the Chair put the question on the motion of the gentleman from Beaverhead (Mr. Witter), and a division being called for, the vote stood thirty-five in the affirmative to thirty-three in the negative.

The Chair announced that the motion was carried.

IN CONVENTION.

President Clark in the Chair.

The Convention was called to order.

Mr. Cooper of Gallatin: Mr. President, the committee of the whole has had under consideration General File No. 12, and beg to report progress, and ask leave to sit again.

The President: The Chairman of the committee of the whole reports that said committee has had under consideration General File No. 12, and have made progress, and desire leave to sit again. If there be no objection leave will be granted.

Mr. Joy, of Park: I move that we do now take a recess until two o'clock.

The motion was seconded.

The Chair put the question on said motion of the gentleman from Park (Mr. Joy), and a vote being taken the same was declared carried.

The Convention took a recess until 2 P. M.

Thursday July 25, 1889.

Afternoon Session.

The convention was called to order by the President at 2 P. M.

The Clerk called the roll.

The President: Upon taking a recess the convention was engaged in the consideration of General Orders. The Committee of the Whole asked leave to sit again. What is the pleasure of the convention.

Mr. Parberry, of Meagher: If there be no objection the committee on irrigation would like to report.

The President: Is there any objection to receiving the report of the committee on irrigation?

Mr. Joy, of Park: I move you sir that this convention resolve itself into a committee of the whole and continue the consideration of proposition No. 14.

Mr. Parberry, of Meagher: Do I understand there is objection made to receiving the report of the committee on irrigation?

The President: No, sir. There is a motion before the house.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Park (Mr. Joy) and the motion was declared carried.

The President: The gentleman from Gallatin, Mr. Cooper will resume the chair.

IN COMMITTEE OF THE WHOLE.

Mr. Cooper, of Gallatin in the chair.

The Committee was called to order.

The Chairman: The question before the committee is upon the amendment of the gentleman from Gallatin (Mr. Hartman).

Mr. Reek of Deer Lodge: Mr. Chairman, according to rule No. 22 a resolution should be limited to one subject. Now the resolution offered by the gentleman from Gallatin I believe contains two subjects. First it provides that a voter shall be a citizen of the United States, and also puts in a test or qualification of a voter as to whether he can read or write. I would ask that these be divided and acted upon separately.

The Chairman: The Chair is of the opinion that the subject matter of the amendment is germane to the question under debate.

Mr. Callaway of Madison: Mr. Chairman, the discussion of the proposition offered by the gentleman from Gallatin (Mr. Hartman) has assumed somewhat of a large range, and I wish to say now that I have almost been upon the fence half of the time. I am in favor of the proposition of the gentleman from Gallatin to erect a higher standard as a qualification for voters, but I do not think at this period of our progress in the history of Montana that we are quite ready for it. I think that perhaps his speech and the speech of the Honorable gentleman from Silver Bow as a matter of education was worthy of all this day's session of this constitutional convention. I would be in favor of a proposition of that kind provided, that it should not take effect immediately. The chief objection, Mr. Chairman and gentlemen of this committee, that I have to the adoption of this proposition at this time, is that we are a new country. We have not yet two hundred thousand people. We are desirous of having more laborers. Have our country settled up, and there will come in the progress of immigration here, I hope within five or ten years at least enough to make a million inhabitants. This proposition is that it shall take effect when this constitution is adopted. It shall not affect any citizen a resident of the state of Montana at that time. But, gentlemen of the committee, it will affect every one else who will come thereafter, who cannot read and write in the English language. Now, you know as well as I, that there are a great many very good people, worthy citizens and patriots, who are likely to come to this country. Take the instance that the gentleman from Custer illustrated, and under the technical provisions of the amendment offered by the gentleman from Gallatin these men will be disfranchised. Mr. Chairman I had a little over four years experience in a controversy that we had here within the memory of most of the members of this convention. Of the company that I took into service in that controversy there were eleven men who could not write their own names, but if I remember distinctly the services of those men, they were as brave and true and as patriotic as any one. I do not believe that the mere matter of being able to read the constitution of the United States in English, or write a name, should be a distinctive qualification for citizenship, and I say in connection with this statement, that I would like to see the standard erected higher than it is now. But do that, gentlemen, with your common schools, and do that in the interest of the nation in a way not to say that we propose now at this time to say, that those who have not had the advantage of education heretofore shall in this young and progressive country be subjected to such a test. In reading history, Mr. Chairman, I think the most of these gentlemen are familiar with the fact that when the barons of England went to King John and with sword in hand demanded of him Magna Charta, the liberties of England, the basis upon which the declaration of independence was made, and following that the constitution of the United States of our fathers a little over one hundred years ago—If you gentlemen will go and examine that old Magna Charta you will find that not one-half of the petitioners could sign their names, but were compelled to sign them with a cross. And going back a little over history again, take the revolutionary war. How many of our fathers—and I say Mr. President, upon this occasion, that we are not indebted to God Almighty so much for the blessings of liberty, as to the men who worked and fought for the liberties of this country—if we had depended upon the great Father, in whom I believe, for the blessings of liberty, and had not our ancestors and forefathers of the revolutionary war taken their swords and muskets in hand, we would today be sitting under British rule. As an instance of history, at the battle of the Cowpens, Colonel Washington, who was a cousin of the father of our country met Colonel Tarlton and signally defeated him; and in Tarlton's retreat from the Cowpens, Washington fought with his sword in his hand struck him a blow in the shoulder that left a scar there that he carried to his grave. A few days after Tarlton's retreat and disaster he was dining with a lady in the state of South Carolina who was intensely loyal and true to the cause of human freedom, but she was polite. She entertained Colonel Tarlton at her table, and in speaking of the battle of the Cowpens, Tarlton was very much disgusted with his defeat and he said to this lady, "why I understand that that fellow cannot even write his own name," "well", said the lady, "Colonel, at least he can make his mark" (Laughter and applause).

Mr. Carpenter, of Lewis & Clarke: I have been very much interested in this discussion, but have only a word to say. Theoretically I am in favor of this amendment. I would like not only to have every voter possessed of the qualifications proposed in this amendment, but of many other qualifications and virtues. But practically, I fear its operation if it should become a part of the fundamental law. Reference has already been made to the exclusion of many persons who are men of intelligence and standing who would be prevented from exercising the right of suffrage on account of physical infirmities. I may add still another class, and that is the blind of America, who are perhaps the most intelligent and self-supporting class of the whole country, without an exception, as a class. There are several objections to the practical operation of such an enactment. So far as forfeiture or adopted citizens are concerned I have not any doubt but that there would be scarcely one of them but that in two years would be able to prepare a ballot to comply with all the regulations of the territory; and, further, I have that confidence in the genius and ingenuity of the American citizen to believe that whether he could read or write or not, he would find some one to get his ballot into the box in the way he wanted it. There is another objection as to the classification of persons, in reference to those who would be here at the time of the adoption of the constitution and qualified voters at that time, and those who came afterwards. That would lead to constant and continual contention and turmoil at every election to be held at the polls for the next twenty years. Further it seems to me that there is under the present Australian System which has been adopted an incentive to education almost as great as that which would be required by the adoption of the educational qualification, for in many cases the person who could not read and write would be ashamed to betray his ignorance at the polls. For these reasons, which are a few of the objections which I can see as to the practical operation of the law, I am opposed to the adoption of the amendment.

Mr. Stapleton, of Silver Bow: I had not intended to take any part in this discussion, but it appears to me that it is really necessary to do so. I am satisfied that this amendment is clearly in conflict with the articles of the constitution of the United States, or that a portion of it at least is. Your amendment provides that this educational qualification shall not interfere with any one who is a voter and has heretofore been a voter in the territory of Montana. Well, the, Mr. Chairman, it will then be supposed that people who come here afterwards, who can neither read nor write, would be excused from voting. People who happen to be fortunate enough to move into the territory at the present time could forever hereafter vote whether they could read or write or not; and it would then be a question as to whether certain persons were citizens of Montana territory at the time of the adoption of this constitution. Now, you must see Mr. Chairman, that that discriminates against the same class of persons residing in other states, that is, we provide that people living in the territory of Montana at the time of the adoption of this constitution who can neither read nor write can vote for all time, and in the same instrument we provide that those who reside in any other state or territory who cannot read nor write. who may come here hereafter, shall not be entitled to vote. Now, we have a provision in the federal constitution which reads like this "the citizens of each state shall be entitled to all privileges and immunities as citizens in the several states". Now I am perfectly satisfied that this amendment is in direct conflict with that provision of the constitution of the United States. Of course, that does not bear upon the main question. If you say that all parties, whether living in the territory of Montana at the time of the adoption of this constitution or living some where else, who can neither read nor write shall not be allowed to vote, of course that remedies this defect, but unless you do that, unless you include everybody now residing in the United States who may come here hereafter, then it is liable to this objection. Now, Mr Chairman, so far as I am personally concerned, outside of this objection, I would be in favor of this amendment, if I thought its practical working would be in accordance with the theories advanced here, and if the gentlemen advocating this measure can convince me that the effect of it will be that the evil which they desire to remedy will re reached and eradicated, I will gladly and cheerfully support this amendment, but I do not believe that it will. I suppose the evil they intend to meet is to exclude all the ignorant, vicious and criminal classes from voting. Now, they should be excluded and I am decidedly in favor of excluding them, if the ingenuity of this convention can provide any means by which they can be excluded. But this amendment will not do that, Mr. Chairman. I venture to say, and I venture to ask this convention if it is not a fact, that you take the army of France, which infests every state and territory in the United States today, and I will venture to say that four hundred and ninety-nine out of every five hundred can both read and write, and a great many of them can read and write in a half dozen languages. Now, so far as I am concerned, I would not have any of those men vote, and on the other hand, I believe education does not consist alone in learning to read and write. Everything we do is a matter of education; it is not known as education, but it is education in fact. You take these young men for instance. One when he is quite young is put by his parents at a trade, he learns to be a good carpenter, blacksmith or cooper, or learns any useful trade; he puts in his time and his talent and works at it day and night, he gives his whole time and attention to it; he never goes to school, but he learns his trade well and works at it. He becomes an honest, industrious, striving, law-abiding citizen, accumulates property, obeys the law, pays tax, is ready to shoulder his musket in support of the institutions of the country, and by every act and every deed and everything he does, is supporting the institutions of the country, thoroughly patriotic in every respect; thoroughly imbued with the future of the United States, believing in it in every regard. Now, it so happens that he has put in his time learning this trade. He has never gone to school, never learned to read and write. Now, take the other young man who never learns any trade, never learns anything by which he can make a living, but he does go to school, and he does learn to read and write, but he learns nothing else. Now, the one is a self-reliant, law-abiding, self-supporting man, whom the community might well be proud of, and you shut him out and say he shall not vote: the other is entirely worthless, no good to himself or anyone else, but he has learned enough to comply with the requirements which this test provides, and consequently he can vote. Now, there is a picture of the two parties. Every tramp in the country can vote, but the very men who are the foundations of the society upon which we so much plume ourselves, the law-abiding citizen, who makes a living for himself and his family, who is never arrested for any crime and who helps support the government in every way he possibly can, you shut out. Now, if there is any way, as I have said, by which you can shut out this criminal class and these dissolute people who have no possible means of support, and who do not vote except for what they can sell their vote for, if you have any possible means by which they can be shut out, I am heartily in accord with it. But I do not believe this substitute will do it. If you say that every young man that has no visible means of support shall not vote, you will come nearer to it. I believe it is almost impossible, indeed impossible, to provide any means by which you can exclude the class of people you desire to exclude, and allow the people you want, to vote. I am opposed to this amendment for this reason, that it will not affect the thing you are trying to do. One reason is that it is in conflict with the constitution of the United States, and the other is that it does not accomplish what we want to.

Mr. Clark, of Silver Bow: Mr. Chairman, the question before this committee for consideration today is a very interesting one, and one upon which much may be said for and against. I have listened with a great deal of interest and pleasure to the discussion of this question this morning, and I believe that what is to be said or may be said in favor of this proposition has been thoroughly and well said; but I doubt whether or not the reasons adduced by these gentlemen are sufficiently comprehensive to warrant them in taking the ground upon which they stand upon this question. I doubt very much as to the breadth of the proposition upon which they stand. I do not believe in confining the right of suffrage to such narrow limits. I believe that in the exercise of suffrage it should be as broad and as wide and as liberal as is consistent with the institutions of this country, and I am not one to believe that the institutions of this country or the liberties of this State are to be endangered or in any way menaced by extending the right of suffrage to the few men that may be found within its confines who are unable to read and write the English language. I appreciate, I think, as fully as anyone the advantages of education; I appreciate the importance of encouraging education; and so far as this proposition may be an inducement to anyone to learn to read and write the English language, it is a good one; but I doubt the propriety of exercising such a penalty upon the misfortune of not being able to read and write. Now, to be unable to understand the language—to read and write the language—is a misfortune, and I don't believe that a misfortune of this kind should be visited by such a penalty as that. I am in favor of withholding the right of suffrage from foreigners coming to this country until they have lived here a sufficient length of time to enable them to acquire the rights of full citizenship. I am in favor of this proposition because I would have those men have sufficient time in which to study the institutions of this country, to become familiar with our laws and our language, if it may be, but having fulfilled these requirements so far as a knowledge of the institutions of this country is concerned, and having an intelligent view of the condition of things so far as that is concerned, if by reason of circumstances—by reason of financial circumstances or physical inability or other reasons he be unable to acquire a knowledge of the language, either to read or write it, I do not believe we should deny him the right of suffrage for that reason. The reference the gentleman from Jefferson made to the question of forcing these men to vote, I do not think has a direct application to this measure. If men in this territory have been compelled to vote against their wishes—and I do not deny that this has been done in several instances, and the rights of human liberty have been thus abridged, and I may say trampled upon—I submit to you that I do not believe that the man who exercises that influence stops to enquire whether or not that man can read and write the English language, nor do I believe that it would make any difference if a man can be thus unduly influenced to exercise his vote in the interest of his employer, I do not believe that the fact of his knowing or his not knowing the English language will have anything to do with the matter. There are reasons which are nearer and more potent than that; which affect perhaps the question of the loss of his situation. As I understand it, the exercise of this provision is only to extend to those who may hereafter become citizens of this territory, and that it is not to extend to those who may be here when Montana enters the union of States. Now, I submit to you the question of whether or not that is correct. Is it proper or right that a man from accidental circumstances should be deprived of the right of suffrage? Is it republican, as is required by the enabling act by which we are framing this constitution? Is is proper that we should have here one class of men who by reason of accidental circumstances should be extended the right of suffrage, and another class of men who in all respects are equally qualified should be deprived of that right? Differences would arise likewise as to the question of determining whether this man who claims the right to vote happened to be here upon the day when Montana's constitution was submitted and ratified by the people of this state. I say that this proposition as it is now before this committee and this convention, presents insuperable difficulties, and there is not sufficient importance to be attached to the proposition that a man shall be able to read and write the English language to entitle him to the right of suffrage, to entail upon us the consequences of the adoption of the proposition, which may even endanger this constitution. Hence, I am in favor of the main proposition and that this amendment shall not prevail.

The question was called for.

Mr. Burleigh, of Custer: Mr. Chairman, in order that we may get a direct vote and save as much time as possible, I move that all the amendments to the report of the committee be laid upon the table and indefinitely postponed. We will get at it more accurately.

The Chairman: The gentleman is out of order.

Mr. Burleigh, of Custer: Then I withdraw my motion.

Mr. Stapleton, of Silver Bow: I am satisfied there are a good many people here who do not desire to vote either one way or the other on this proposition as it stands. There are a number of questions involved, and by dividing them they can vote as they see fit on them. Therefore, I ask that the motion be put, and these questions be divided and separated so that the members may vote upon each one.

Mr. Courtney, of Silver Bow: Mr. Chairman, I think now that we have had this bill under consideration ever since we met this morning, and have discussed it in pretty thorough shape, that it should be submitted to the House. If any of the members desire to make any distinction as to the provisions of this bill, they have a right to do so hereafter. I do not want to see this discussion prolonged, and I think it is nothing more than just that the bill be submitted to us in order that we may vote on it now.

Mr. Middleton, of Custer: I would ask for the reading of the amendment offered by the gentleman from Gallatin.

The Clerk read the amendment for the information of the gentleman.

Mr. Bickford, of Missoula: I move you, sir, that that amendment be adopted.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Missoula (Mr. Bickford), and a vote being taken the same was declared lost.

Mr. Joy, of Park: If another amendment is in order I desire to offer one.

The Chairman: There are two amendments on the table now. The question now is upon the amendment of the gentleman from Missoula.

Mr. Clark, of Silver Bow: I call for the reading of the amendment.

The Clerk read the said amendment, being the substitute of the gentleman from Missoula, Mr. Bickford, for the information of the committee.

Mr. Bickford, of Missoula: Mr. Chairman, it will be observed by the members of the convention that the substitute offered by myself contains several propositions, differing somewhat from the original proposition introduced by the committee. To the first propostion I propose to say nothing; in other words, I do not propose to argue before this convention the propriety of conferring upon those persons who have declared their intention to become citizens of the United States the right of suffrage, nor do I propose to aruge the proposition contained in the substitute concerning the persons or idiots or insane persons having the right to vote, because I think that is covered by section 8 of the proposition presented by the committee. However, the proposition which I do propose to discuss before the convention is the last contained in the section which I offered, and that is that the legislature shall have the power to confer upon women the rights and privileges of electors to vote in any or all elections. In the first place it must be remembered by the members of this convention that in proposing for the people of this territory a constitution that we are creating a fundamental law; one which, so far as we are concerned, is intended to last for all time. It then becomes our duty to weigh carefully every proposition that is submitted here as bearing upon the future welfare of the people of this territory, and of the territory itself. The right of suffrage has been discussed to a considerable length here this morning, and very ably discusssed from many standpoints, but it has not been discussed from the standpoint of woman suffrage. While I am not at the present time in favor of conferring upon the women the right of suffrage, while I am opposed to the conferring upon them the right of suffrage, it is their own fault it is so. The reason is because they do not avail themselves of the privilege of suffrage at the time when it is conferred upon them; but I do say in this connection that the right of suffrage is just as much a natural right to the women part of creation as it is to mankind. I say then that this proposition, or the right perhaps of suffrage, is either a natural right which comes to us in the same way that the right to live, to breathe and to exist comes, or it is a right which is conferred upon us by the state in which we live. Viewed from either of the standpoints mentioned, it is still a right which should be conferred upon the women; viewed in either way it is a right which belongs to them, because they are just as capable of exercising the right of suffrage as mankind is, just as capable of discriminating so far as voting is concerned as are the men. In the early days of this country, as was argued here this morning, the right of suffrage was universal so far as men were concerned. They all voted. Very soon there was enacted a law in the Colonies, and the law remained upon the statute books for a period of about thirty-three years, which conferred the right of suffrage only upon male citizens residing in the Colonies over the age of twenty-one years and who belonged to some particular church. It was discovered that this disfranchised about three-fourths of the men residing in the Colonies, and this restriction was removed. Following along down the line of history, we find that the different states in the Union have prescribed certain restrictions as to the right of suffrage, and while at the present time there are only two states in the Union which provide that there shall be an educational qualification for voters—the states of Massachusetts and Connecticut—we find that the other states have had just such a provision in the constitution. At the present time the right of suffrage is extended almost universally to the male part of the population, those over twenty-one years of age and residing a certain time within the limits of the particular district in which they seek to vote. That being the historical view of the matter, very briefly stated, we find that in 1866 there was established in the United States what was known as a woman's suffrage association. This was the immediate outgrowth of the fact that about that time there was enfranchised in the south nearly one million voters who before that time occupied a position of servitude, who had been slaves in fact. At that time the argument was advanced and urged by the people of this country with every appearance of reason and fairness that if the government of the United States was about to enfranchise a million voters of the ignorant classes, that it was only fair that this reform should go one step further and enfranchise the women. They said "we are superior to the negroes; we can cast a more intelligent vote than the negroes; we can cast a ballot that will reflect the sentiment of this country better than the persons who have just come from a state of servitude," and that argument, I think, has never been refuted to this day. But the movement, commencing as it did in the eastern states, did not find a very wide-spread encouragement, and in fact it has been growing very slowly from that time down to the present time. I think we can gather from the pages of history the fact that this movement inaugurated as it was at that time has been gaining ground and has been gaining in public favor from that time down to the present. If it is true then that the sentiment in favor of woman suffrage has been gaining ground, if we find from the signs of the times that the sentiment is gaining favor, ought we not in our constitution to make a provision which will make it possible for the Legislature to confer the right of suffrage upon women, if in the future it becomes the prevailing public sentiment that they should have the right to vote? (Applause) I believe that to be the correct argument and the correct position in this matter. I want to take as conservative a position as is possible. I want to confer no right but what would be justified by the sentiment of the people of this great territory of Montana, and at the same time I want to loosen every bond, every thread, which would bind us to the traditions of the past, if it is found that that thread ought to be severed. Now, sir, in the state of Massachusetts in the year 1878, we find by reference to history that the republican convention of that state in that year recognized upon the floor of the convention Lucy Stone and Mary A. Livermore, the first women who ever in the history of the United States appeared upon the political arena in a convention of politicians. We find that in 1878 the republican platform—the general platform of the republican party—recognized this in their platform as a principle which should receive at the hands of the republican party a fair consideration. We find then that from that time on there has been organized in this country a political party known as The Woman's Rights party. It has grown so far as to place in the field a candidate for the Presidency of the United States, and notwithstanding the fact that the lady who was placed at the head of that ticket did not see fit to go to the polls and cast her vote in favor of herself, still we know that the lady who was the candidate of that party was worthy of the esteem of every American citizen, not only because she was a woman, not only because she was possesed of the qualifications of a voter, not only because from her education and experience she could cast a ballot which would reflect credit upon any American citizen, but also because of the fact that she took an interest in these matters, and should under all natural laws be entitled to cast her vote and to have her views in the administration of public affairs reflected. Then we find, tracing the movement a little further, that in many of the states and territories, or at least a few of the states and territories, the right to vote has been conferred upon women. We find that the right has been conferred upon women to vote in the state of Kansas in municipal matters, and in matters appertaining to the schools. The reports which come to us from Kansas concerning this right and the exercise of it by women demonstrate the fact that it has been wisely used. We find that in those municipalities where the women have taken an active part in the management of municipal affairs that they have in a measure at least purified the administration of public justice, and I have here, sir, in the Helena Journal of July 24th, 1889, a letter from Mrs. Humphrey referring to woman suffrage as it affects the people of Kansas. The letter is to Hon. Judge Morris. She says, "Yours in which you ask an opinion upon the subject of woman's suffrage &c. has been received.

"In reply I would say that personally I have not been accounted among the enthusiastic advocates, much less an agitator in behalf of woman suffrage, and hence my opinion," etc.

That is the substance of the letter, Mr. Chairman, and I need not refer further to that. Enough it is to say that in every place where the right has been conferred upon women it has been for the good of the polls. It is not a fact that the fears of those who oppose the measure are realized, nor are the hopes of the friends of the movement entirely realized. It is not true that by going to the polls the woman is degraded to the level of the man, nor is it true that on the other hand the difficulties that present themselves to every honest American citizen are entirely done away with It is not true that the ballot is purified to any great extent by the presence of women, nor is it true that she suffers from any contaminating influences which she finds at the polls. Therefore. taking this conservative view of the matter, and believing that as the framers of a fundamental law, as the persons who sit here for the purpose of saying what the rights of our citizens shall be for perhaps years to come, I say that this right should be conferred upon the Legislature. The Legislature is quick to respond to any public sentiment which may grow in this direction, the Legislature is quick to respond when it is found that the sentiment of the people is in favor of conferring a right, the Legislature can, under the provisions of the substitute which I have offered, proceed to confer upon women the right to vote in the same way that men have that right, and if in their discretion, if in their judgment at some future time they should believe that women should have the right to vote, I believe they should have the power to confer upon them this right. Not long since I saw in a paper published in Washington Territory that our sister territory was struggling with this same question. It was there stated that on account of the Seattle fire it was impossible to present a petition which contained the names of twenty-five thousand people who asked of the constitutional convention of Washington that this right be conferred upon women Now, this is in a territory, mind you, gentlemen, where the right of suffrage has been conferred upon women; this is in a territory where they have tried the experiment, and found that it does not militate against their institutions. This is in a territory where two or three years of experience has shown them it is wise to confer this right upon women; this is in a territory, too, where the Supreme Court of the territory has decided that the law under which women were allowed to vote was an unconstitutional law. And so it is, in every stage of the march and progress of this movement from the year 1868 down to the present time there have been difficulties encountered which would have appalled any less courageous persons than the ladies who have this movement in charge. There have been difficulties which have seemed almost insurmountable; there has been the selfishness of mankind who desire to control the political affairs of this country; there have been the prejudices which have grown up on persons from their infancy to manhood, and become a part of them; and in the face of all those difficulties I say that the sentiment of the people of the United States has been growing steadily in favor of woman suffrage. It has been growing in favor of woman suffrage for the very reasons that have been urged here this morning, and for that matter against the proposition introduced by the gentleman from Park, and the gentleman from Gallatin. They have urged against it, or they have urged in favor of this, that the women are not among the criminal classes. It is proposed in this proposition, No. 14, that the criminal classes shall be excluded from the right of suffrage, or at least that that portion of them who are so unfortunate as to go within the walls of the penitentiary. There is an argument right in that one fact in favor of woman suffrage, that it is almost impossible for the opponents of the movement to overcome, because it is shown by the statistics of this country that not one-tenth of the criminal classes come from the woman's side. There is a further proposition. They say that the criminal classes are not entitled to the right of suffrage because they are the enemies of the very laws that are enacted. They say that the criminal classes shall be excluded from the right of suffrage because they infringe these laws, and so far as that is concerned, if it is a guide in framing this constitution, then we should confer the right of suffrage upon women. But I am not arguing that question. I am simply arguing the proposition of allowing the Legislature to provide the means by which women can vote. I am arguing a proposition by which the women of this country can, if the public sentiment warrants it in the future, go to the polls and vote as any other American citizen. There are so many reasons that might be urged in favor of this proposition that it is impossible within the limits of the time I feel I have to speak to the convention to urge them all upon you. I feel that every man who has a wife, every man who has a mother, every man who has a woman friend that he respects, should vote in favor of this proposition, because he owes it to them. I believe he should vote in favor of this proposition because by so doing he will add one ornament at least to the bright crown of the state of Montana. (Applause) I believe, sir, that it will be a step in the onward march of progress. I believe it will be a step in the march of political progress, of which no man in this convention will ever be ashamed. I believe, sir, in arguing this proposition or any possible substitute, that every member of this convention will do himself justice and will do his constituents justice, and that they will approve all that he does; that they will be proud of him as a man, liberal enough in his convictions to allow him to vote as he thought proper in the interest of progress, in the interest of good government; and in the interest of nothing more nor less than an act of simple actual justice. (Applause)

Mr. Burleigh, of Custer: While I concur in a great deal that has been enunciated by the gentleman who has just taken his seat, it appears to me that he has not been as circumspect in selecting his text as my old friend, John Dickey, was in Pennsylvania. He had been employed to preach for a congregation, and was nearly starved to death with the promises they had given him of support. John was a man of large proportions, with a wonderful appetite, and nothing made him suffer so much as to go hungry; and he took for his text one Sunday morning the saying of David: "And I said in my haste that all men are liars"; he said, "but, my dearly beloved hearers, if David had lived in this day and generation and been pastor of this congregation, he might have made the announcement at his leisure." So I say my friend is not as circumspect as old John Dickey was. Now, while I endorse every word he says in regard to woman suffrage, I think he has introduced it in the wrong time. I want this matter of suffrage to come up during the latter days of my existence when I can put myself upon record without any embarrassment or any sense of gratitude. If he thinks more of the ladies than I do and have for the last fifty years, he is a wonderful man—a very wonderful man (Laughter), and I say here I want the question proposed fairly and squarely. And I thought when he got up here in the face of this fashionable audience that he was a good deal like old Adam in the Garden of Eden when he tasted of the forbidden fruit. God took his cane and walked around there in the garden—I don't know whether He had a cane, but He took something anyhow—and said "Adam, where are thou?" and Adam came out from under a bush—or whatever they had there in the Garden of Eden—and then the Lord went on and told him what he had said about the tree of life and the garden, and the old coward got up and said, said he, "the woman tempted me." Now, I don't want any excuse of temptations or anything of that kind. I want the man who is in favor of female suffrage to introduce a negative and independent proposition, and so help me God, I will support him. (Applause) When I come to consider the matter as I have for many years, I think it is right. And why not? Where did I get my intellect from, what little I have, but from the good mother who bore me? Where did I get my consolation from when I had the colic in infancy? It was from the spoon, and from the little package of medicament containing catnip, peppermint or pennyroyal. When I was sick on my bed who consoled me? My mother. Who taught me what little I know of the world to come. That mother. She gave me every inspiration that has ever tended to ennoble me however much I may have held it off. She gave me my intelligence, my education, and everything, and for me to turn around now and say she shall not be allowed the same rights I enjoy would be sacrilege and would merit the reprobation of Heaven as it would of men on earth. And I say to my friend if he will bring a proposition up here that is fair and square—I am not going around looking for popular clamor or popular fame or anything of that kind—but if he will bring that proposition up fairly and squarely, I will support it if I die in my tracks. (Applause)

Mr. Middleton, of Custer: Mr. Chairman, it seems to me that the question ought to be divided, and I therefore move a division of the question. There are two or three independent and separate propositions, and some of them I would like to support and others I am opposed to, and for that reason I would like the question divided.

Mr. Marrion, of Missoula: I would like to call the attention of the Chair to Rule 41.

The Chairman: The gentleman's substitute will be in order as soon as the substitute of the gentleman from Missoula is disposed of. The question is upon the substitute of the gentleman from Missoula.

Mr. Bickford, of Missoula: Mr. Chairman, I move you, sir, that the question be divided, so that the vote may be taken on the separate propositions contained in the substitute and so that the proposition first to be voted upon will be as follows: "In all elections not otherwise provided for in this constitution, every male citizen of the United States, or those who have declared their intention to become such, of the age of twenty-one years, who shall have resided in this state during the twelve months immediately preceding such election, shall be entitled to vote."

The motion was seconded.

Mr. Clark, of Silver Bow: I desire to offer an amendment to strike out the words "or those who have declared their intention to become such."

Mr. Goddard, of Yellowstone: Mr. Chairman, it seems to me that to strike out those words would bring us back to the original proposition No. 14.

The Chairman: I think the gentleman's motion to strike out is out of order until the section is perfected.

Mr. Clark, of Silver Bow: I desire simply to offer that amendment before the question is put.

Mr. Collins, of Cascade: Is an amendment in order now to the original section itself?

Mr. Mayger, of Lewis & Clark: I would like to have the proposition read before voting upon it.

The Clerk read the same.

The Chairman: The question is upon the amendment of the gentleman from Silver Bow.

Mr. Eaton, of Park: I rise to a point of order. I understand that there are two amendments to the section under consideration. Any member, as I understand further, has a right to call for a division of the question when a motion made under such circumstances, that is, with two amendments pending, does not take the course of an original motion; and therefore an amendment under those circumstances to that motion must be ruled out, there being two amendments already pending.

The Chairman: There is but one amendment pending. That question has been divided. The amendment of the gentleman from Silver Bow is to the first division.

Mr. Eaton, of Park: I simply wish to say that I understood the Chair to say that you ruled out the amendment of the gentleman from Park on the ground that there were two amendments pending.

The Chair: That was the original motion, but the amendment to the amendment has been voted down.

Mr. Joy, of Park: I offer an amendment to the original motion.

The Chairman: It is out of order. There are three other amendments.

Mr. Burleigh, of Custer: I would like to know what we are voting on.

The Clerk read the amendment of the gentleman from Silver Bow (Mr. Clark, for the information of the gentleman from Custer.

Mr. Middleton, of Custer: It does not seem to me that that amendment offered by the gentleman from Silver Bow should be made. The qualification of requiring a man to be a full citizen of the United States, which would require him to have resided somewhere in the United States for at least five years, and have taken out his first and second papers, does not seem to me to be conducive to that kind of immigration that we want to have. I believe that a great deal of the foreign immigration that will be likely to come here, if we have a constitution under which they can become citizens wtihout living here pretty nearly one-third of a lifetime is such that we should extend the hand of welcome and say to them "As soon as you are in this territory twelve months and have declared your intention to become a citizen you shall have a voice and vote in our elections." I do not believe that it is desirable in the interests of a new state as sparsely settled as this is at this time, and of such vast territory, to make that sort of qualification. I am opposed to the amendment. I think the original proposition as it stands is correct.

Mr. Maginnis, of Lewis & Clarke: Is not there an amendment submitted by the gentleman from Missoula, Mr. Marrion?

The Chairman: His is a substitute.

Mr. Maginnis of Lewis & Clarke: I ask that it be read for information.

The Clerk read the same for the information of the committee as follows: Substitute for Sec. 2. Sec. 2. Every male citizen of the United States and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one nor more than five years before he offers to vote, who is over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections by the people; First, he shall have resided in the state one year immediately preceding the election at which he offers to vote: Second, he shall have resided in the county, city or town where he shall offer to vote at least sixty days immediately preceding the election.

Mr. Maginnis, of Lewis & Clarke: I called for the reading of that because that is the proposition I propose to support when the time comes. I do not believe we can afford to be more liberal than the rest of the new states around us. Minnesota, Dakota, and our new sister, Washington, have all incorporated provisions that persons who have declared their intentions shall become citizens of the territory. I fully concur in the line of argument made by Judge Knowles the other day in speaking of that class of our people, how their lot is cast with us, how they are out here helping us to develop a new country, to develop its resources, and that they have a common interest with us. He was speaking at that time of the advisability for subjecting them to military duty. I believe that the rights and privileges of a citizen should go with the obligations of a citizen, and I am in favor of making them citizens of the new states. At the same time I am aware of the abuses of naturalization that have been practiced in the territory, having seen voters manufactured upon election day by hundreds, and district and county clerks leaving their offices and going about seeking whom they might naturalize, instead of waiting in their offices for people to present themselves. Now, the proposition offered by the gentleman from Missoula—(Interrupted)

The Chairman: I would say that that proposition is not pending.

Mr. Maginnis, of Lewis & Clarke: I know it is not pending, but I am speaking to it.

Mr. Cooper, of Gallatin: I think the gentleman is out of order.

Mr. Maginnis, of Lewis & Clarke: Well, I will speak to the proposition pending and declare my preference for the one that is to come. Now, in the first place it provides that a man shall not be a voter under one year after he has declared his intention. He not only must reside in the territory a year, but he must have declared his intention at least one year before he offers to vote, and it also provides that that declaration of intention shall have no force or effect until five years after it is made. To show that a man is in good faith he must perfect it in five years and become a full citizen. With these precautions I would be in favor of extending the right of suffrage to the class of people therein embraced. If I were living in an old and settled state, I might take a different view of it, but I look upon it that we are all here in a new country; we all have the same ties, common hardships and common dangers, and we are all engaged in the work of developing and building up the resources of this country; and I believe that all who are so engaged should have an equal right in expressing their will as to the conduct of public affairs.

Mr. Clarke, of Silver Bow. I desire to say a word. I do not agree with the gentleman that anyone coming into the United States from any country, no matter what his qualifications may be—and as a rule we know a great many are ignorant people—is entitled to the privilege of suffrage in one year. I do not believe that a man can sufficiently understand this country—as I remarked in a speech recently—I do not believe that he can understand the institutions of this country, understand its laws and its people sufficiently to enable him to vote intelligently upon any subject; and I do not believe that any man coming from a foreign country to the United States should be allowed to cast his vote and have it operate against the vote of any of the people of the State of Montana, within one year. I believe that a residence of five years here in the United States is necessary to qualify a man thoroughly to exercise the right of suffrage. Now, this question of naturalization, as every gentleman here present knows, has been made a matter of barter and exchange. There has never been an important election taken place in this territory but that upon the day of election or within a few days preceding it, hundreds and I may say thousands of men have been brought down to the offices of the Notaries Public, not voluntarily and of their own accord, because they were to become citizens of this great country, but because some politician wanted their vote and said to this man and that, I will pay the expenses of your naturalization papers if you will go down and take them out. What has been the result? Hundreds and hundreds of those men took out their naturalization papers, and some of them probably sold their votes to the politicians and exercised the right of suffrage, and what has been the result of it? I believe that there are thousands of those people in the territory of Montana today who have never completed their papers and become full citizens of the United States, and if the law required them to take out their last papers and become full citizens of the United States, these men would have an inducement to become full citizens of the state or of the United States. As it now stands, these men are without their first papers today, and even if the provision that is mentioned by the gentleman from Missoula in his substitute should be adopted, when the five years expires they will simply go back and renew their intentions to become citizens of the United States in order that they may vote. I do not like to take up the time of the committee, but these are a few of the reasons I have in my mind for the conviction and hope I have that there shall be a qualification of full citizenship in this State, and full citizenship of the United tSates to entitle a man to vote in the state of Montana. (Applause)

Mr. Reek of Deer Lodge· I trust this amendment will prevail. I would like to call the attention of the gentleman to section one, which has already become a part of the constitution (reading) "The Militia shall consist of all able-bodied male citizens between the ages of eighteen and forty-five years." This would certainly be very unjust and very inconsistent to allow a man all the privileges of the ballot and to exempt him from military duty and I trust that this amendment of the gentleman from Silver Bow will prevail.

Mr. Bickford, of Missoula: I desire, sir, at this time to accept the amendment offered by the gentleman from Missoula. I think that the provisions contained in it are wider and more reasonable than those contained in my own provision. I believe that it will subserve the interests of the people and the voters of this territory better than the first part of the proposition which I offered myself and therefore I desire at this time to endorse the substitute for my own amendment.

Mr. Burleigh, of Custer: I would like to make one remark on the subject before it goes to a vote. I dislike very much to consume the time of the convention but it has been the custom, it has been the law, that a man who came over here in good faith and filed his intention to become a citizen of the United States should enjoy the right of suffrage; and it has been held, sirs as one of the cardinal democratic principles of this country—and I may be regarded as a queer one to talk democracy here, but I have had it in my heart for a great many years, and I announce it now as lying at the foundation of my political faith—but these men come here and what do they do? They are required by the constitution and laws of the United States to remain here five years before they can come into full citizenship. Are they exempted from taxation? Not at all. As soon as they acquire a dollar of property, after having declared their intention to become citizens, they are liable to taxation. Are they exempt from military duty? Not at all. They are required to go out and leave their homes and shoulder their muskets and go out in the defense of the liberties of their country. Now, for a mere obstruction, to ignore these fundamental principles of citizenship on account of a mere imaginary technicality—for that is all it is—and ostracise these men from participating in the affairs of the government, is an outrage that would disgrace the Empire of Russia or the Dominion of Turkey.

Mr. Clark, of Silver Bow: I just wish to say one word If the proposition that the gentleman states be true there are twenty-seven states in this Union that have disgraced themselves by enacting laws requiring full citizenship as a qualification to vote.

Mr. Maginnis of Lewis & Clarke: Mr. Chairman nearly all of those twenty-seven states did that in the earlier days of this republic, and before these naturalization laws were throuoghly discussed. You cannot find it in a new state.

Mr. Hogan, of Silver Bow: I differ somewhat from my friend here from Custer. I do not think it right or just for a man to come here from another country, and before he learns the ways and customs of the country, and before he is identified with the country, the people or anything else, to allow him to take out his first papers. I had to wait here twenty-one years before I could vote, and I was born and raised in the country. Now, I think when a man comes from a foreign country that he should expect to learn the ways of the country. I hope it will prevail. I do not think it is right or reasonable that a man should be allowed to vote before he knows what he is voting for. I have seen men that had been in the country for several years—I mean they had been in the country long enough to become citizens—and they had never even taken out their first papers; but they happened to be working for some corporation that wanted their vote, and they went up like so many cattle to suit the favor of their employers.

The Chairman: I would like to ask the gentleman from Missoula if he did not accept the amendment of his colleague?

Mr. Bickfordl of Missoula: I accepted the resolution of the gentleman from Missoula to the first part of the proposition which I offered as a substitute for section 2.

Mr. Eaton, of Park: I rise to a point of order. My point of order is that the gentleman from Missoula introduced the motion. It was certainly moved to amend that on the motion of the gentleman from Silver Bow. That motion to amend having been introduced, it is utterly beyond the power of the gentleman from Missoula to accept any subsequent amendment offered by any gentleman without the unanimous consent of this convention.

Mr. Clark, of Silver Bow: I should have raised this point of order myself but I supposed the gentleman from Missoula was accepting my amendment all the time. (Laughter)

The Chairman: The question is upon the amendment of the gentleman from Silver Bow.

Mr. Stapleton, of Silver Bow: There may be a little difference in the phraseology of these two amendments, but the effect is the same; the effect of both is to give those who have declared their intentions to become citizens of the United States the right to vote, and to that I am opposed. It makes no difference who introduced it; whether it was introduced by Mr. Marrion of Missoula or Mr. Bickford of Missoula, or whether the gentleman accepts it or whether he does not accept it; I am opposed to both of them. My friend, Mr. Burleigh, of Custer, in discussing this question, says that men who have declared their intention to become citizens are not exempt from military duty. Well, now, I believe this convention has provided that none but citizens of the United States shall bear arms or shall be subject to military duty in the state of Montana.

Mr. Maginnis, of Lewis & Clarke: Citizens of the state.

Mr. Stapleton, of Silver Bow: It is quite true the constitution has not been adopted. The convention thought otherwise and they have exempted these men who have declared their intention to become citizens from military duty in the state of Montana.

Mr. Maginnis of Lewis & Clarke: I think the article reads "Citizens of the State."

Mr. Stapleton, of Silver Bow: I do not think I am mistaken. I think that men who have declared their intention, the way the constitution is so far, are not subject to military duty. Now, my friend, Dr. Burleigh, again argues that because they pay taxes they should be allowed to vote. Now, there is nothing in that, Mr. Chairman, for the reason, he says, they are obliged to be here one year before they can vote. Now, during that one year they have property, and they pay taxes. Now, we have good and wise and beneficient laws of the United States providing that the people of all nations and all climes shall come here and become naturalized, if they so desire. The laws provide how that shall be done, and then when they shall first declare their intention to become citizens, and after having resided in the United States for the term of five years that they may then apply for and receive their full papers, and from that time they become full fledged citizens of the United States, subject to all the duties and liabilities and responsibilities of citizens and to every other duty and to every other responsibility. Now, as long as they are not citizens of the United States they are citizens of the country from which they came, it makes no difference where they came from. The mere fact of coming here and declaring their intention at some future time to become citizens of the United States does not divorce them from their allegiance to the country from which they came. They are just as much citizens of that country after they have declared their intention as before, and it is only by getting out their full papers and renouncing all allegiance and fidelity to the foreign state or potentate that they cease to be citizens of the foreign country and become citizens of the United States. Therefore, Mr. Chairman, we have the spectacle of men who are still citizens of a foreign country, who owe allegiance to that country, who are subject to all the requirements of that country the moment they go back there—the moment they put their foot on foreign soil—we have the spectacle of their coming to this country, and then the next day after declaring their intention, whether they can speak our language or know anything about our institutions and in one year from that time they can vote. I do not believe in that, because I do not believe they can learn or understand anything about our institutions within one year. The fact is that an Amreican citizen, or a man born in America, naturally imbibes the spirit and intention of our institutions; he imbibes them with his nourishment from the time he is born, and he understands more about it at the age of ten years than any man can possibly understand who has only been here one year; and if he will learn the duties of an American citizen in five years he has done exceedingly well, and he has given considerable attention to it if he learns it in five years, if he gets to understand the spirit and intention of our institutions, because they are so radically different from those under which he was reared, and so entirely different from all the laws he has known, that it takes him a long time to understand it, And therefore I say that a citizen of another country should not be allowed to vote or help run the institutions of America. I am perfectly willing that when they have complied with the laws of Congress, and after they have become full-fledged citizens that they shall vote. They are not even subject to jury duty. A man is called upon a jury and is asked whether he is a taxpayer; he says "yes"; then he is asked whether he is a citizen of the United States and if he says he has only procured his first papers he is excused from duty. He is not liable to military or jury duty but he has all the privileges of an American citizen without any of the responsibilities of an American citizen, and I do not believe they should have more privileges than we have ourselves. An American citizen is subject to military and jury duty. These men have the same privileges; they can vote and their property is protected by the laws; they have the same protection without the responsibility. Now, while I am willing, when they have complied with the laws of Congress, to give them the same privileges that we have, I am not in favor of giving them any more. These gentlemen who are in favor of giving them the priviliges of citizenship within one year's time are in favor of giving them more privileges than an American citizen has. They give him all the privileges without casting upon him any of the responsibilities. Now, Mr. Chairman, there is no country in the world where an American citizen can go and declare his intention to become a citizen of that country and be allowed to vote. The fact is that we are doing more for these people than they ever do by us in any of the countries they come from and it does appear to me that even citizens who are foreign born and who have been in this country long enough to understand the spirit and intention of our institutions must know by their own experience and must understand that a man is not sufficiently acquainted with the spirit and intention of the institutions of the United States to cast an intelligent vote in one year after he comes here. If there is any doubt about it in his mind, if he will go down to Castle Garden in New York and see them as they land there—see all the criminals of the whole world landing there at Castle Garden, and then think that these people can vote in one year after they get here, he will soon get an understanding of the question. The fact is, we are making of the United States a Botany Bay for the whole world and making it an asylum for all the halt and the blind and all the lepers, and then you turn around and say that these people, with all their crimes, who are sent to the United States —you want to make them in one year's time after declaring their intentions full-fledged American citizens who shall help to run our institutions and shall say who shall hold our offices; and one vote of this kind can kill the vote of the best man in Montana territory—a man who has made a lifetime study of the spirit and intention of our institutions and knows what is best to be done, and the man who is doing the best he can for America and for her sons and daughters—his vote is neutralized by the vote of one of these people who have been here only one year and have declared their intention to become citizens. I do not think it is right, and therefore I shall vote against it. (Applause)

Mr. Maginnis, of Lewis & Clarke: I do not like to trouble the convention more, but I wish to say a few words in reply to my friend from Silver Bow. Now, it has been the law in this territory from the beginning, except one term, when the Legislature changed the qualifications of voters, and as my friend from Missoula said, Judge Knowles opened a special term of court, in order that the men should not get out a license. Now, my friend from Silver Bow says that when a man declares his intention to become a citizen he is still subject as a citizen to a foreign power. If Bismarck, the chancellor of the German empire should undertake to force the view of the naturalization laws which my friend has enunciated—if England should again try to do it—if France or any other country should try to do it, we would have a repetition of the spirit that showed itself when Colonel Ingraham threatened to open his guns upon the Austrian frigate because they attempted to take the body of Martin ...., who had declared his intention to become a citizen of the United States. The party especially to which he and I belong—and I do not bring this in as a party question—fought a war upon that very issue in 1812, and prosecuted it to a successful conclusion; and after it was over maintained that high standard that a man who had declared his intention of becoming a citizen of this territory should be protected by the Stars and Stripes wherever it floated, in every quarter of the globe. The American people have held to that doctrine from that time to this, and consequently the argument of my friend in that respect certainly must fail. Now, if we adopt this constitution in the way it is reported from the committee, we will disfranchise men who have voted in this territory and who have voted for the gentleman, who voted for me, and who voted for every member who sits on this floor—men who cast their votes that we might come here, that we might make this constitution, who will disfranchise them by our act in this convention. Do you think it is right and wise to do that? Do you think it is right and wise to be less liberal, as I said, than all the states around us? The matter is taken verbatim from the constitution of Missouri, of Minnesota, of Iowa, of Nebraska, and Kansas, and Illinois, and of all these new states. It is true as my friend from Silver Bow (Mr. Clark) said that twenty-seven states of the Union have a different clause in their constitution, but nearly all of those constitutions were made long ago, and to the most of those states immigration has rarely come—has not gone in there to build them up, to swell their resources and to help them become great states. They were finished communities and had no need of this help. Now, I thought I heard a slur thrown out that a man advocated a principle like this because he expected to get these people to vote for him. Now, if I know anything I know that the tendency will be against the party I belong to and the principles that I advocate I know that in advocating this thing I am advocating the principle that is in favor of the continued supremacy of my own opinions, of my own party in this territory, for the character of the new immigration, Scandinavian immigration that comes here, that they naturally fall on the other side of the political line. So it cannot be said that I am not disinterested at least in advocating this proposition, but I think it would be unwise for us to depart from the liberal policy that the territory has always held to. We have been driven from it once and were driven back to it under press of popular opinion and in response to such an outraged cry as has never arisen upon any question in this territory, as I well remember. We cannot afford to be less liberal than the states around us, with whom we are competing for immigration, and I hope the convention will take the wise and liberal view and adopt the proposition made by the gentleman from Missoula.

Mr. Callaway, of Madison: The gentleman from Silver Bow, Mr. Stapleton, has said to this convention all that it is necessary to say upon the proposition now pending. I do not arise to add anything to this argument. My friend who has just taken his seat has made a statement as to history. It is proper enough that these matters should be called up and discussed. Mr. Chairman, the war of 1812 was fought for the purpose of carrying out the same view proposed in this amendment.

Mr. Maginnis, of Lewis & Clarke· Will the gentleman allow me to correct myself or rather to make myself more explicit? The war of 1812 was fought against the right of search by English cruisers who desired to search American vessels that they might impress men who become citizens of America in order to serve upon their men-of-war.

Mr Callaway, of Madison. I beg to correct the gentleman again. I think that was not the proposition. That war was fought upon the principle that they had no right to search American ships to seize those who had become citizens of the United States who had at one time been subjects of England—not those who had declared their intentions to become citizens. I think I am correct in that. And another thing, Mr. Chairman. I admire a gentleman who belongs to a party, and I know that my friend is conscientious in his views—his beliefs—as to the greatness of that party, its glory and history, but at the time of the war of 1812, there was no democratic party (Laughter) nor was the President of the United States at that time in office elected by the democratic party.

Mr. Sargent, of Silver Bow. Mr Chairman, I am in favor of this amendment, and when I think that half of our own native born people are disfranchised and a large percentage of the other half are forbidden the right to vote until they are twenty-one years old, I fail to understand why members are so sensitive about the proposition that foreign-born residents shall remain in our country long enough at least to acquire some liberal knowledge of our institutions before being permitted the right to vote. Our American youth, as everybody knows from, the advantages of our schools and the general diffusion of knowledge which prevails in this country, are familiar with our history and public affairs at the ages of seventeen and eighteen years and are fully qualified to vote intelligently, but the law says they shall not vote until they are twenty-one years of age. Now, I think that everyone will admit that the average American youth of seventeen or eighteen knows at least as much, and has at least as good a knowledge of our institutions and loves our country at least as much as the average foreigner who comes and lands on our shores and in a few months takes out his naturalization papers and perhaps cannot speak a word of our language. If we could discriminate between intelligent voters, intelligent foreigners who take out their papers in good faith against those who are not, it would not be so bad. To the intelligent voter from whatever land or clime, who comes here and takes out his papers in good faith, I say all hail and welcome and I would make his probationary period which he should serve as short as possible. But every member of this convention knows that a great many foreigners never think about taking out their naturalization papers, but on the eve of election they are sought out in the devious saloons by committees of some one or other of the political parties; they are taken up to the court and there they declare their intentions—God save the mark!—the Judge might as well read an extract from Sanscrit for all they know—but nominally their intentions are declared. The real and only intention in the whole transaction, and that is not declared publicly, is the intention of the committeeman to secure that fellow's vote. (Laughter) But the farce goes on; the naturalization papers are issued; the committeeman pays for them, and the poor, ignorant dupe goes out of the courthouse a full-fledged voter. I say that by that act the proud name of an American citizen is insulted and degraded, labor is endangered, and justice bows her head and weeps for shame. (Applause) I believe that every man who sells his vote, and every man who buys it should be disfranchised, and should be forever forbidden the privileges of an American citizen. (Applause) I think the duities of citizens to the government are reciprocal. If the government grant privileges to a citizen and protects him in his life and property, the very least that the citizen can do is to acquaint himself a little with the principles of the government upon which his liberty depends. Now, it often happens that these men who are hired to take out their papers vote once or twice afterwards as they are told, and then perhaps wander to the ends of the earth and never become citizens at all; but as long as they do vote, their vote counts just as much, Mr. Chairman, as yours or that of any member of this convention. It discriminates unjustly against our own native-born people and in favor of this very class. Now, I do not think there is any discriminating unjustly against making a citizen. If when the foreigner takes out his first papers he has the full right to vote, why the necessity of taking out second papers? The very fact that second papers are required is proof that the act of naturalization is not complete, and that the benefits which it confers do not and should not vest until the act is completed. I believe it is a proper safeguard which the country exacts to compel a man to show his good intention and give him time to become acquainted with the institutions of our government, so that when he becomes a citizen he can take an intelligent part in all public affairs. I think the proposition is in favor of a better government and in favor of a higher and more intelligent government and I am in favor of it. (Applause)

Mr. Warren, of Silver Bow: Upon this question of suffrage it is about time we had the courage of our conviction. So far as I am concerned I am certainly in favor of the amendment proposed by my colleague from Silver Bow, Mr. Clark, and had I my way I would make that seven years instead of five. For fifteen years I have watched this question of naturalization within the territory of Montana. Just before every election comes off in my county—and I suppose all counties are like Silver Bow—there are at least one thousand persons coming there and declaring their intention to become citizens of the United States. The records show that less than five percent of them ever perfect that declaration. If this question could be divided in such a way as to permit certain foreigners to vote, I would be in favor of it. Take, for instance, the Germans or the Irish, when they come to this country, as a rule, they burn the bridges behind them and become as good citizens as we have. On the other hand, you take other foreigners, notably the Italians, they come here and declare their intentions and as quick as they accumulate $150 or $200 they go back to Italy and that is the last you see of them. In the meantime, if he has an opportunity to sell his vote for a couple of dollars, he is on hand, and I believe that the youngest page in this body is today better entitled to vote than fifty per cent of the foreigners who land at Castle Garden. This question is a question that is coming up all over the United States. I feel that any foreigner that comes to this country, takes out his first papers and declares his intention, who lives here and finally becomes a citizen, as I am, or any other citizen of this country, should be allowed the privilege of taking a part in the affairs of the government. But you take for instance this race of Italians I speak of. Only a short time ago four or five hundred of them were imported from some place, I know not where, into Silver Bow County to work upon the Butte Short Line Railroad. They had been there but a short time before the contractors came from the Denver & Rio Grande and took them away down there. If we had had an election here they would have voted here; and been down in Colorado in time to vote again there. They have administered to them the oath that you renounce forever allegiance to any foreign state, prince or potentate whatever so help you God, and then they are as good American citizens as any other citizen who is born and raised in this country, and their votes are the equal of the most intelligent of our people. A friend has called my attention to a little article here which voices my sentiments. (Reading) "It is somewhat uncomfortable to reflect that a citizen of intelligence, property, good moral character, and a keen sense of the responsibilities and dignities of his duties as an American citizen, may have his ballot offset by an Italian Lazzarone, exuding garlic at every pour of his otherwise unpleasant body, whose intelligence does not equal that of the monkey for whom he grinds the organ, and upon whose sense, industry and honesty he depends for his maintenance and macaroni." (Laughter and Applause).

The Chairman: The gentleman from Missoula offers an amendment. The question on that amendment is divided. To the first division of that question the gentleman from Silver Bow offers an amendment. The question is now on the amendment of the gentleman from Silver Bow.

Mr. Courtney of Silver Bow. Before voting I would call for the reading of the section with the amendment.

The Clerk read same.

The Chair put the question on the amendment of the gentleman from Silver Bow (Mr. Clark), and a division being called for the same was declared carried by a vote of fifty-four in the affirmative to seven in the negative.

Mr. Collins of Cascade: I have another amendment to offer to the first division.

Mr. Bickford of Missoula: I would ask if the amendment offered by Mr. Marrion of Missoula is not now in order.

The Chairman It is not in order at the present time. The question is divided.

The Clerk read the amendment for Mr. Collins of Cascade as follows: I move to amend by striking out the word "Male" and insert after "person" "without regard to the sex".

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Cascade; Mr. Collins, and a division being called for, the same was declared lost by a vote of twenty five in the affirmative to forty-three in the negative.

Mr. Breen of Jefferson: I have a substitute that I wish to introduce in place of the amendment.

The Chairman: The Chair is of the opinion the substitute would be out of order.

Mr. Breen of Jefferson: I sent up an amendment half an hour ago.

Mr. Joy of Park: I would like to inquire if an amendment would be in order to this subdivision.

The Chairman: Yes sir.

Mr. Joy of Park: I would like to offer one.

The Clerk read the amendment offered by Mr Joy of Park as follows: "Amendment to Sec. 2 Subdivision 1. "Insert after the word "years" in line ....the words "who has been convicted of felony or treason against the United States."

The Chairman: The Chair is of opinion that that would better apply to the second subdivision of this question.

Mr. Warren of Silver Bow: Mr. Chairman, I move the adoption of the first section.

The Chair: The question is on the first subdivision of this substitute offered by the gentleman from Missoula.

The Chair put the question on the said subdivision and a vote being taken the same was declared carried.

The Clerk read the second subdivision as follows. "Provided no idiot or insane person shall be entitled to the rights and privileges of an elector."

Mr. Burleigh of Custer: I would like to inquire of the gentleman who offers this amendment by what criterion or standard this status is to be judged, because it might be that half or nearly half of this convention would be ostracised under that provision (Laughter) I would like to have some standard fixed.

Mr. Middleton of Custer: Mr. Chairman, it seems to me that that is practically two propositions and should be treated as two propositions; that is, first that an idiot or lunatic should not be permitted to vote. The other is as to the matter of the convict or person who has served a term in the penitentiary; that is a separate and distinct proposition. I move that that be stricken out entirely for the reason that section eight of the proposition is practically the same thing.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Middleton) and a vote being taken the same was declared carried.

Mr. Middleton of Custer: I do not want to pose in this convention as a friend of the criminal, or of those persons who have been sentenced to the penitentiary and served a term for crime, but it does seem to me that where our legislature enacts a criminal statute fixing certain penalties for the commission of certain offenses that that penalty when paid or performed should purge the individual so far as the state is concerned of the crime for which he served. It does not seem to me that it is desirable, or the part of wisdom, to have a law or a constitutional provision that will disfranchise a man forever after serving a term of say six months in the penitentiary. The man presumably is put there for the purpose of being reformed. He may have seriously and from the bottom of his heart repented of his crime. The offense for which he was convicted and for which he served that term might perhaps be a technical offense, one that you would from a moral point of view not say was a serious crime, and still by that sort of provision in the constitution you place that man in a position where he is deprived of the benefits of citizenship—those rights and liberties which we as free and independent citizens prize so highly. And it seems to me that a provision of that kind, places that individual where he will as soon as having served his term of sentence continue to be a criminal and perhaps perpetrate some much more serious offense than that for which he served that sentence by reason of feeling that he has been branded for all time to come in the state of Montana against casting his vote on account of that service in the penitentiary. I do not believe that that should be the intent. I do believe that all persons should be punished for crime. I do believe it is competent and proper to leave the matter in the hands of the legislature, to say that for this offense you shall serve five years, that for that offense you shall serve twenty years, and that for a capital offense you may be hung; but to say, if you serve six months in the penitentiary you shall forever after that regardless of how frivolous a matter you serve that term for, be disfranchised in the state of Montana, and we will place you in a position where you cannot have the rights of citizenship—where all you can do is to continue to be a criminal the rest of your life—I submit, Mr Chairman that that is not reformatory; that its tendency is vicious. The argument that I attempted to make the other day when a similar question was up practically a portion of it bears upon this same subject. I do believe that men so far as possible when convicted and sentenced to the penitentiary should be reformed—should be placed there under such surroundings and influences as would tend to make them better men, as would tend to make them repent of the wrong they had done, and as would tend when that term of sentence expired to make them go out into the world and be again men worthy of being considered as citizens, notwithstanding the fact of their having served that sentence: and I do not believe, Mr. Chairman, that we want to put that in our constitution. I move you that it be stricken out.

The motion was seconded.

Mr. Clark of Silver Bow: I desire, Mr. Chairman, to concur with the gentleman in his views upon this subject. We have, I believe, adopted or incorporated into this constitution a provision which comprehends that justice in this state shall be reformatory in its nature and not vindicative. Now, the object of a sentence to the state's prison is to punish the criminal and I believe that when he has gone within the prison walls and served out that time, that he has in the eyes of the law fully expiated his crime. I believe that when that criminal is set free and those striped garments are cast off, and the shackles from his feet discarded, that he ought not to be sent forth into the world with the mark of Cane upon his brow, that every man may point to him with scorn and say, "there goes a criminal". But my opinion is, that you ought to place that man in such a position again in society that he will be encouraged to take new lines and go forward and have every encouragement to try to make a man of himself. You disfranchise him. At every election the question is brought to his notice, and his neighbor will question him as to his privilege of voting, and at every turn there is an infamous brand set upon that man that tends to discourage him; whereas it should be the object of the law rather to encourage him and try to make a man out of him, that he may go forward and try to forget himself in the world. But, if you put this provision in the constitution, and there is nothing to encourage a man after he has been disgraced in that way, and after he has fully expiated his crime within the prison walls of the country, then there is no inducement for him to go out in the world to begin life anew and to endeavor to reform himself.

Mr. Stapleton of Silver Bow: That is a very good sentiment to be expressed by these gentlemen; but I do not think it works well in practice. Now, Mr. Chairman, I am not in favor of any criminal voting, and as I expressed myself here once before to-day, if we had a way of knowing who are the criminals and who are not, I would be in favor of shutting them out before they were convicted at all. If we could have it so that we could know who are the thieves and inborn villians, I would never allow them to vote. But, as we have no means of knowing who are the criminals and who are not until after they are convicted, I say that after they are convicted and after the Commonwealth has paid an attorney to defend them after the Commonwealth has paid for the privilege of establishing their innocence and after it has paid for the attorney and witnesses on both sides, and after they have had a fair and impartial trial, they are decided to be criminals, I say that that should forever shut them out from voting. Now, there are two classes of people; one are the honest, upright, hard working and law abiding people, and the other are the criminal classes. They are divided into those two classes. One is always ready to obey the laws in everything, and the other is always seeking how he may evade them. My friend, Mr. Clark, talks about these men after they have served a term in the penitentiary going back and becoming useful citizens. They go back to the slums with a little more cunning, with a little more doggedness, a little more determination to obey the law, but never determined to lead an honest and upright life. I say that after we have discovered those people, we should never let them go, and I would be in favor right now, if we had any means of doing it, of inserting a clause in this constitution that no man belonging to the criminal classes should ever cast a vote in the state of Montana, but as we have no means of knowing who they are, we have to wait until they are convicted by a jury; because after you allow them to vote they just as much belong to the criminal classes as they did before, and their whole object is to elect judges who will be inclined to be lenient with them, and it very often happens that, in these larger cities particularly, they succeed in putting in some of their own crowd, and running the city government to suit themselves. That often happens in New York and in other large places. We have seen some specimens of it in Butte. When the time comes to vote you see them go forth from the slums the very first ones. The business men may be too busy to get out to register or vote, but if you are down around the slums you will always see them coming out early in the morning. You will see them coming out and registering; you will see them ready to sell their votes; and these are the men now that my friend Mr. Clark wants purified by sending them to the state's prison, and wants them to go out and sell their vote and repeat the same thing over and over again. After serving a term in the penitentiary I venture to say they are not purified, they are if anything a little worse. It never makes an honest man out of a thief. He slinks back where he came from, and that is where he naturally belongs, and he would not be at home with good, honest, law abiding people, and therefore I say that his vote should never be alowed to offset the vote of those people.

Mr. Burleigh of Custer. It occurred to me while these gentlemen were speaking here that they hardly manifest the right kind of spirit, and one gentleman's heart quite seemed to be chilled to the frailties of human nature, as appeared by a remark which fell from his lips Now, it occurred to me when he was animadverting upon the remarks of his colleague from Butte that he had forgotten the teaching of that great and good man who was on earth nearly nineteen hundred years ago. When a certain sinner was brought before him and accused of a crime which I will not name, after listening to the accusation he got down and wrote on the ground, and when he got up the accusers had disappeared Said he "Where are the accusers? They have fled". Then he turned to the sinner and said "Go thy way and sin no more". That is the spirit which enters into the whole administration of the criminal law in this world, or should be, and because a man happens to be sent to the penitentiary or convicted of a felony, perhaps of treason, or of sedition or rebellion against the government which he regards as oppressive in his own conscience, he should not be assigned to eternal damnation either in this world or the next for it. There should be a space left for repentance, and that is the foundation upon which our penitentiaries are established. Now, suppose a man here commits a crime—I may say suppose a brother or a son of my friend—of course nothing of the kind will happen, and I do not know as he has any brothers or sons, and I don't care whether he has or not, it doesn't affect the illustration, Suppose he happens to be convicted of a crime, perhaps unjustly. The court administers the law and he is consigned to the penitentiary for six months or a year, which would be the period for a felony. We look around and say, what was the nature of that crime? What is crime made up of? Is it made up of a criminal act or a criminal intention? Now, suppose he is sent to the penitentiary. The poor boy goes there. He repents in sackcloth and ashes. He says I went with my companions, I fled away. He has a good education. He has had the instructions of his father from Silver Bow County, the philisophic and other teachings to make him a man. He gets out and says "I have atoned for my offense. I have satisfied the penalties of the law. I can now go home, for my mother has forgiven me, my brothers will forgive me, my sisters will forgive me, and they will embrace me when I get back, but my father has put a clause in the constitution which says that I shall be branded as a villain all the days of my life." (Laughter and (Applause).

Mr. J. K. Toole of Lewis & Clarke: There are two views expressed with reference to this matter, and it occurs to me that both of them are extreme. One of them is that the man who is convicted and sentenced to the penitentiary ought never to be restored to his civil rights; the other is that he shall be. Now, it seems to me that the proper ground upon which to place this proposition is that the individual should be restored to his civil rights and to his vote if he shall have been pardoned by the proper authority. It often happens—it does happen whether often or otherwise than an innocent man sometimes gets into the penitentiary and it happens that the public, acting through the chief executive of the state, interposes his pardon; and I think it will not be claimed by the gentleman from Silver Bow or from any other section of this territiry that when the fact is known that a man is innocent and the executive have interposed the authority and the strong arm of the law to release him, that he ought ever afterwards to be disfranchised as a citizen of the United States. And again, I think an amendment ought to be added to it—these words ought to be added to the amendment "Unless pardoned for the offense for which he was convicted". It may happen, in the line of argument pursued by the gentleman from Silver Bow, Mr. Clark, and others, that a man who has been convicted upon testimony which was true, and the guilt admitted, or upon a plea of guilty for that matter, after having been sentenced to three or four or five years, as Dr. Burleigh says, and having served that term of sentence he has repented of his crime and desires to lead another and a better life. In that kind and character of case it ought to be left to the executive to say, after having conferred with the Warden of the penitentiary and others in authority, just before the close of the term, of that individual—it ought to be within the power and authority of the Governor to intervene and interpose the executive clemency by means of a pardon. If that was done it would be left to the Governor to discriminate between the kind of individuals who are likely to be well disposed towards the government and who will be likely to make good citizens of the United States, and the other class, whom it would be better to disfranchise, and not leave him to pardon indiscriminately and restore anybody and everybody to their civil rights. So that there are two classes of cases which would be benefited by this amendment which I suggest. One would be the innocent man, and the other would be the citizen who is well disposed towards the government, and for him there would be some possible show in the future I propose this amendment.

Mr. Carpenter of Lewis & Clarke: I am opposed to putting any part of that in Section 2, in reference to persons convicted of offenses of any kind. I think the committee have made the best disposition of that question. Section 9 reads "The legislative assembly shall have the power to pass laws excluding from the rights of suffrage persons convicted of infamous crime". It seems to me instead of legislating too far in the first sections of this proposition, we might safely leave this branch of it to the legislature. Infamous crimes I take to be those punishable by imprisonment in the penitentiary. There are two classes of those crimes. One class involves moral turpitude; another class does not. A man may commit a crime, be sentenced to the penitentiary, and yet be as honorable a citizen as there is in the community. An illustration of that would be a man who considered himself injured when perhaps he was not, but believeing that he was, on sudden provocation, committing an assault. He might have committed a dangerous assault in the heat of passion resulting from what he supposed to be a provocation, and yet that man would come out of the penitentiary as honorable a citizen as there would be in the state. His intentions had always been honorable, and yet he had suffered the penalty of an indiscretion. It seems to me that this question can safely be left to the legislature to provide such rules in reference to the disfranchisement of persons convicted of crime as they think proper, making it dependent on the wisdom of the Governor or providing other regulations in regard to it, and classifying if they choose the different grades of infamous crime.

The Chairman: The motion is to strike out.

Mr. J. K. Toole of Lewis & Clarke: I would say to the chair that I do not desire my amendment to be put unless this proposition should pass.

The Chair then put the question on the said motion to strike out and a vote being taken the same was declared carried.

The Chairman: The Clerk will read the substitute of the gentleman from Missoula.

The Clerk read the same.

Mr. McAdow of Fergus: The Organic Act which creates our territory empowers the legislature to confer upon women the rights of suffrage In one of our sister territories, Wyoming, the experiment has been tried for now some twenty years, and from the best testimony that we have, from the judges on the bench in that territory, from the Governor, from prominent citizens, it has been a grand success. Now, Mr. Chairman, I believe that it will redound to the credit of this state if we put a clause in this constitution empowering the legislature to grant the rights of suffrage to the women. We do not want to close the door in the face of our intelligent women. We do not want to build up a Chinese wall that will forever prevent them from the rights of suffrage. I believe, sir, that to place in the hands of women the ballot it will be an effective weapon, for the working girl can say to her employer, you shall pay me the same wages for the same services (Applause). It will place in the hands of the mother an effective weapon to protect her home, her children, and her person from the unjust acts of a brutal husband, if she can say to him "I can vote"; I will cast my vote for an officer that will enforce the laws, that will protect me." In these foreign countries I believe today nearly every one of them extends the right of suffrage either by law or by inheritance to the woman. This republican government is the only country I believe today that prohibits the suffrage from one-half of our people. Now, gentlemen, one of our fundamental principles is that taxation without reperesentation is tyranny. That, sir, is what our forefathers fought for in the revolution. That, sir, is what the tea was cast overboard in Boston harbor for. Now, gentlemen, if we extend the rights of suffrage to the women it will certainly be in accord with that fundamental principle. It has been said upon this floor that government is upon the consent of the governed. Now, I would like to know if women are to be governed and have not a voice in the making of the laws. They are amenable to them; they are brought into court and tried by one-half of the enfranchised citizens of the state. I have heard the expression here that this is a government for the people and by the people. Now, gentlemen, if our intelligent women are not people, what are they? Our fundamental laws are certainly conflicting with what we are doing at present, and I believe, sir, if we grant this right of suffrage to women it will redound to our credit. I think at present it would be proper and right to place in our constitution the right of suffrage for women, but if that cannot be done, I trust there is sufficient liberality among the members of this convention—that liberality for which Montana is noted—not to close the doors and build up a wall against the rights of our women.

Mr. Burleigh of Custer: I would ask the gentleman if he desires to offer an amendment to anything now before the house.

Mr. McAdow of Fergus: I am in favor of this amendment pending

Mr. Callaway, of Madison: For more than a quarter of a century I have studied this question now before the convention in all of its phases. I have heard some of the best orators, both men and women, in the United States speak upon this question, and long ago I have been convinced that we would have a better government, a purer government, based upon better principles of justice, if women were allowed to vote, than our present government. There are, however, some objections to the amendment of the gentleman from Silver Bow. I would be in favor of submitting a separate proposition to be voted upon by the people, not incorporated as a part of the constitution, because it might endanger it. A vote for the constitution as a body can be taken, and separate propositions as this convention may propose can be voted upon; and if this proposition were voted upon separately by the people, and they are satisfied with it, then it would be incorporated and form a part of the constitution. I believe, sir, that I would rather favor at the polls the proposition offered by the gentleman from Fergus. Yet there are some embarrassments, it is fair to say. I will take this illustration now, that I have made to myself, and I say it frankly to the gentlemen of this convention that in some one of the several standpoints I am satisfied that my wife's vote at the polls would, as a rule, be as good or better than mine; but I would not favor any proposition that would subject her to military duty. The basis of military duty is that of the suffrage. Now it might be—she is a very domestic lady—I don't think she is ambitious to become a military hero at all—I think she leaves that to her husband; but if she should want to raise a military company over there at Virginia and go to some encampment, as they did here last fall, and be subject to the same kind of grub that they furnished here at Helena, that she would have cause for a divorce. Again, sir, she is rather a popular lady, well aducated, and it might be that the people of Montana would want to elect her Governor and in that case when I walked along the streets my friends would say "there goes the husband of the Governor". That, Mr. Chairman, would be unjust discrimination. I would not like it. And again it might be that they would want her to run for Congress—to go to the Senate or House of Representatives. I think, Mr. Chairman, that I would oppose that. I think it would be better for her to stay at home and take care of her babies, where she does very well. It would seem to me in that case more appropriate and more accordingly to the eternal fitness of things if I were to go to Congress and she were to take care of the babies, though I am not a candidate. If you will provide in this constitution that she shall have the right of suffrage, but not be eligible to office except as pertaining to school elections, and be exempt from military and jury duty, I will give it my hearty support.

Mr. Rickards of Silver Bow: I have not taken up any of the time of the convention or of this committee, and neither do I intend now to take up more than a moment or two of your valuable time now. However, I am always ready to give a reason for the hope that is within me Now there are some gentlemen on this floor who have the happy faculty of erecting men of straw to see how gracefully they can knock them down. Now I predict that unless there is better material for congressmen and governors on the other side of the house than the side that has just spoken, he will never be the husband of a Governor or the husband of a Senator. (Laughter and applause). Now, gentlemen, it seems to be in order to tell anecdotes. It is said that during the recent war some one visited that great and good man Abraham Lincoln during the dark hours, and said to him "Mr. Lincoln, I am sure that we must succeed in our cause, because the Lord is on our side." Mr. Lincoln said to him "there is one other consideration that is of more importance to me than that." "ray, sir, what can be more important than that"? Thoughtful and reverent as that great and good man ever was, he answered, "to know that we are on the Lord's side". Now, gentlemen, I am not so much interested in being on the woman's side as I am to have them on our side. (Applause) Now, I shall not attempt to enter into any argument why the right of suffrage belongs to women. I am not as old a man as many of you take me to be. I am comparatively young—younger than my friend from Custer, I have not had as much experience—but I say with pride that ever since I have been able to give this matter any consideration I have been a warm adherent of the doctrine that women should have the right of suffrage.

Mr. Burleigh of Custer: Will the gentleman allow me to make one remark? I desire to suggest to him that age consists not in the multitude of years but in the manner in which they are spent (Laughter) .

Mr. Rickards of Silver Bow: I did not catch the remark but I do not doubt it was good. The gentleman always says good things. Now, gentlemen, I say I have always been a warm adherent of the doctrine, if you will call it such, that the right of suffrage rightfully, if you please belongs to women; but I am that shrewd a business man to know that it is the part of policy that when you cannot get all you want to take what you can get, and I am persuaded that if we should incorporate in our constitution a clause giving to women the right of suffrage, there are ungallant men enough in Montana to defeat that constitution. Therefore I do not stand before you and urge that This resolution, or rather the amendment now pending, asks a very reasonable thing; it is simply to give us as a state what we have had ever since we have been a territory. Congress gave us that. Has any legislature seen fit to abuse the trust reposed in them by the Organic Act? Has any legislature attempted to anticipate public opinion and force upon our constituency woman suffrage? No I believe that if we leave this matter just where it is and has been ever since we have been a territory, we leave it in safe hands, and that is all I ask you to do. Now, I confess to you that I am not ashamed—and never expect to be ashamed or apoligize to any man or set of men for my adherence to these principles. I say it with pride, that I have taken my wife's hand upon my arm and led her to the polls and voted with her upon school questions. I loved her just as dearly, reposed just as much confidence in her afterwards as I had done before; and I believe gentlemen, that the time will come when all of us who have wives—I wish you all had—will be glad of the opportunity some time—I do not say all times—but will be glad of the opportunity in taking that one by the hand or arm who has borne us children, who has nursed us in our sickness, who has been to us more than all else on earth, to help us knock down into smithereens the machinations of brutal men. (Applause) I say I believe the time will come when we will gladly avail ourselves of that opportunity. Now, when that time comes I would want the women to help us smash the slates or do anything else that has been set up against right and decency, I want the legislature to have the power to give them that right; and that is all that I plead for today, and I believe that the good sense of this convention—I make no attempt at flattery, but looking over this body into your faces, I believe I size up this convention right when I say that we will adopt this amendment and leave this matter in the hands of the legislature (Applause)

Mr. Whitehill of Deer Lodge: I do not know of any question that has come before this convention in which I feel a deeper interest than the one which is being discussed at present, but it seems to me that the advocates of this proposition have not stated all there is in it. I do not believe if we are to admit the propositions which they present that there is no answer to their arguments Now I think, if we start out with the proposition that women are entitled to the same privileges that men are, as they assert here, and that the natural rights of women in shaping governmental affairs are the same as men's, that then there is no argument to meet that question. So that I do not believe from my standpoint that the advocates of this proposition state the proposition fairly. There is no question but what two men occupying the same position are entitled to the same rights, there is no question but what two women occupying the same position are entitled to the same rights; but when you come to say that a woman is entitled to the same rights as a man in every respect, I say that that is simply an assertion, and there has been no argument presented here which convinces me. I would gladly vote for this proposition if I believed that the good women of this land, the good mothers, the good women whom we all respect—if I believed that one half of them even were desirous of having this proposition passed, I would gladly support it. But to go back to the proposition I say that it is a law of nature—it is implanted in the human system—it is a law of God you might say—that this difference exists. It is not through any desire of the men to be tyrants over women to prevent them from having their just rights, that I oppose this. I think the men who are opposed to this are animated with quite as chivalric principles as any of the advocates of it, and I am free to say that they would go as far in protecting the rights of women as any men would. I say that when it comes to protecting the married women in her rights of property I will go as far as any man in this convention. I say it is unjust that a lazy loafer of a husband who is married to a woman can take away her property from her should she receive any. I say that that is unjust to the women, and for that purpose and to that extent I will go so far in passing laws that will protect the women in the rights of property as any person. But when it comes to giving the rights of suffrage to women I say we are going against a law—we are setting aside a relation which I say has been divinely implanted, that is the marriage relation. If we are prepared to say now that marriage is a failure, why then I am in favor of giving the women the right of suffrage. If there are to be no marriages I can see no reason why the women should not vote; but so long as this institution is a part of our government—and it is; it cannot be avoided—why then I say that I am opposed to this, because it is the entering wedge which will bring about not woman's elevation, but her downfall. Everybody knows what the history of the Roman Empire was, that during the republic and the consulates the woman's rights were curtailed, and that was the time of their greatest influence,. that when in the latter days when wealth and luxury were having full sway there was a law passed that the contract between women and men was simply a civil contract that a man and woman could go together and live for a certain period and at their own option dissolve the civil relation. Now, I have seen it in some of the constitutions, and it is in many of them, that marriage is a civil contract. If that be so, if there is nothing more in this relation than that it is a civil contract, why then it is proper for the women to be divorced at any time they can agree with their husbands. But, is there any person who believes in any such doctrine? The law of selection is implanted in the breast of every man; it is illustrated by the selection of unintelligent creatures. The birds of the air make their selections, and there are certain animals where the male makes his selection and is as true to that selection as any husband is to his wife. Now, I say that woman's influence is exercised in a different way. To be sure she has no right to vote but what home is there in which the mother is not respected? What son is there that will not protect that mother and do everything in his power that she desires; what husband—and I would say in regard to Brother Rickards proposition that he has been proud to lead his wife to the polls, I would say that if she voted a different ballot, I do not believe he would have so gladly taken her to the polls; and that is just where the trouble comes in. So long as the woman obeys the man and votes as he does, he is glad to take her to the polls, but the instant she refuses to be governed in that vote as he desires, there is where the dissension enters that will cause division—that will cause the downfall of woman instead of her elevation. Now, I say that every man who is opposed to this is just as much in favor of the protection of woman as the men who are in favor of it; for it is said that the man is to the woman as the cord is to the bow, and I say that every person who recognizes this marrmage relation is as much in favor of the protection of the women as are those who clamor so much in favor of female suffrage. The woman's cause is the man's; they rise and sink together.

Mr. Breen of Jefferson: I may not be as well versed, or I may not be as well acquainted in the ways of entertaining this convention upon questions affecting the common welfare of the people as the majority of our speakers here are, but I desire to say that I trust my sense of justice may be as well developed as that of the gentleman from Deer Lodge. He claims that Mr. Rickards' wife may vote his way, if Mr. Rickards lets her. Now I would be willing to wager a new hat that if the gentleman from Deer Lodge has a wife that she will vote every time the contrary way from what he votes and that's what's the matter with him. (Laughter and applause) Looking at this matter from a standpoint of justice, I would like to know the reason why the women are not as well qualified to vote as the men of Montana, but as that is past I will let it go for the present. Now if we were here without an election day coming on us this fall—if we forgot all about that and looked at it from a standpoint of justice I think there would be more than twenty-nine votes registered in favor of woman suffrage, and I think also that we would have had an intelligent qualification required for a voter this fall, and not have the men from Ethiopia or Italy or any other place vote as we vote. I am glad that the time will come when we will have the names of these twenty-nine men that dare to stand up her and say that the interests of their mothers, their wives, and their sisters, are as dear to them as their own interests, and that they shall have an equal right with them in the affairs of this life. The women that are born here and raised here and have a knowledge of the institutions of the country, they can say as intelligently as any of the men what lights they shall look up to. At the same time the penalty is just the same for women as for men, and if she breaks the law of the land she serves her sentence. If she is supposed to obey the law then I say let her vote, and if she is not supposed to obey the law then I say let her not vote. If they are supposed to grow up and become useful citizens, I say then give them the same privilege, and I trust that when we do that this gentleman that stalks around the polls and clasps a bottle of old rye in his bosom, that his business will be knocked in the head. I have seen that done several times in this territory myself. The opponents of this measure claim again that the women do not want to vote. Well. at one of the greatest political meetings that I ever attended in Montana five years ago this coming fall, I heard a gentleman speak and in his opening he said that no doubt the young ladies of Montana would encourage the boys to vote for Mr. So-and-so, because he was single, and was a handsome young gentleman and approved of woman suffrage; but he claimed also that he was a married man, and would request the married women of Montana to urge their husbands to vote for the candidate, as although his wife had never expressed a desire to vote she didn't want him to say she should never vote. Now this question is certainly not a new question, and it is a question which is one of the most important before us. I heard a lady on this floor, since I have been attending this convention, say that it made her shudder to think that the men of her town that she saw marched up to the polls and voted were making laws under which her children were compelled to live and grow up. I am the brother of six sisters. Every one of them is as intelligent, every one as sensible, and all possess a better education than I do, and I am willing to grant the ladies of Montana the right of suffrage, not only in the future at any time if the legislature sees fit to grant them this privilege, but at the present time; and even though this clause is not adopted, I will not get up like a gentleman did her on the floor today and say that if a certain clause he was opposed to carried, he would endeavor to defeat the constitution if he had to spend money in the attempt to defeat it. But, if this clause is defeated, which I have every confidence it will not be, then I say that we that are in favor of it, it is not our duty to go forth and defeat the constitution, but to go forth and send a legislature here that are in sympathy with the popular wish, and not with the ignorant elements of the people of Montana. (Applause)

Mr. Sargent of Silver Bow: I am in favor of giving women an equal chance with men. Placed side by side in every relation of life, she is a safe adviser, a wise counsellor and a true helpmate. If this be true, and I think no one will deny it, then this question involves something more than the justice or the propriety of extending suffrage to women; but our own manhood and our sense of fairness and justice, and that degree of excellence, moral and intellectual, which we have attained is at stake, and will be determined by the way in which we treat this question. The true woman elevates and refines every sphere and adds grace and dignity to every calling in which she engages. In the moral world she is pre-eminent; in the world of society she reigns supreme; in deeds of charity and in works of love she is untiring. In every station of life which man in his selfishness permits her to occupy she fills with credit and honor. But it is said that politics is an exception to the general rule, and is a domain upon which woman should not enter. I fail to see the course of the reason which reaches this conclusion. Man in his supreme egotism and selfishness has unjustly arrogated to himself the sole right to manage and mismanage affairs of state and has denied this right to woman. Our government is but the family enlarged, and in the government of the family woman bears an equal share, she exercises equal judgment, more tact and infinitely more patience than man. If in this small sphere she is a credit and success why should she not be equally successful in a wider field? But it is said that politics is degrading, and that if woman engages in it she will lose some of that charm and grace of manner and mien to which man looks up with so much admiration and respect. I fail to see why it should be so. The young man who reaches his majority and assumes all the responsibility of political and social rights, sacrifices thereby not one jot of his ability or integrity of character, neglects no business interests, and swerves not aside from the path of duty which he has marked out for himself in life. And it is not reasonabe to suppose that women will devote more time to politics than men, or that she will neglect her family or other duties to do so; and to say that she will sacrifice some of her delicacy is to assert that she is more susceptible to harmful influences than man, which no one will dare assert. There are many positions in public life which, unjustly I think, are made subject to political preferment, which women could fill better than men. As matrons in our reformatory institutions, in our asylums, in our colleges and academies and schools, and in kindred institutions where she can mould her influence to the ocassion and tend to elevate the moral tone of such institutions, and to soften and refine the disposition and character of all those that are not hardened, she is unexcelled. To illustrate the prejudice which has always existed against the advancement of women, a few years ago there was not a college in our country where a woman could acquire a higher education, and when the doors of the first college—Oberlin I believe—were opened to the co-education of the sexes a howl of indignation and horror went up from one end of the land to the other at the shocking spectacle of a young lady sitting side by side with a young man trying to gain a liberal education. Today two hundred colleges open their doors to four thousand women who are engaged in friendly competition with men to acquire intellectual light, and literal education. I dare say, and I affirm that the prejudice which exists to-day against woman's voting is just as senseless and just as unjust as that which existed a few years ago against her acquiring an education, and I believe in a few years to come, when women shall exert a wholesome influence in our affairs, as she certainly will, that you will not be able to find a man who will be willing to admit that he ever opposed it. (Applause) I have been asked if I would take my mother and my sisters and my wife, if I had one, to the polls. Most certainly I would, and I think if the average man would take his wife with him and would be governed by her advice, he would come nearer voting right than he ever did before in his life. Many of the best and ablest men of our own and other countries have acknowledged that whatever degree of success they have attained in life they owe to the pure teachings and wise counsels of their mothers. Is it reasonable to suppose that the mother who can train her son to a life of usefulness and honor cannot be trusted to give expression to her opinions through the ballot without sacrifice to her own delicacy and without detriment to public affairs? The idea is absurd and preposterous. But I will not detain you. There are many reasons why I think women should vote. Among them, because her vote will not be a purchasable commodity; because she will not descend to the methods of the ward politician; because I believe of she ever be elected to any convention or legislative body she will not consume the time by introducing resolutions which are nothing but buncombe, because her influence and politics will be on the side of law and order and peace, and on the side of morality and of the purity of the ballot, and that she will be for good government. For these and for many other reasons which might be given I am in favor of her enfranchisement and in favor of giving the legislature the power to grant it in their discretion.

Mr. Collins of Cascade: We have heard the argument of the gentleman from Deer Lodge. He said all that could be said and said it in the right way, and said it in the way that I think every gentleman will admit demonstrates clearly the justice of our position on this matter. We have heard the argument of the gentleman from Silver Bow, and that was put in the same manner. Now, I think if we decide this question upon the logic of the arguments as against suffrage and in favor of suffrage that we would be compelled to vote in favor of universal suffrage. But that is not the question. That has been decided adversely by a vote of tyenty-six to thirty-two. A large minority of this convention without speaking upon the cold blooded proposition, without any talk voted for giving women the same equal rights of suffrage that men have. Now, that is passed upon so far as the committee of the whole is concerned, and I hope that this committee after seeing that a vote of a large minority in favor of this proposition will not say that the people of Montana cannot by their representatives and their legislature, legislate upon this matter in years to come I believe that the small majority of this convention cannot in reason and justice do a thing of that kind I believe that the people of Montana have the right to say in their future legislation that if the sentiment shall grow in favor of it, that it shall be adopted, and that women shall have the same right of suffrage that men have. This is the question before us now, and I hope that you will not place a constitutional prohibition in the instrument that we are now framing which will forever relegate this question to oblivion. The legislature is the place it belongs to, and if we voice the sentiment of the people of Montana, and if they favor universal suffrage in the ratio by which it is shown here by this vote, this convention does, then probably next year or the following year they may wish to see this question adopted, and then I say the legislature of our State should have the right to voice that sentiment and to give women the right of suffrage.

Mr. Ramsdell of Missoula: Although I am not in favor of woman suffrage I shall vote in favor of this amendment. I believe we have too many ironclad enactments in this constitution already that preclude the possibility of change I believe that this being a progressive nation and Montana particularly so, that we should lay ourselves open to the evolution of time, and that the fewer ironclad resolutions that we introduce in this constitution on this question the better. As I said, I am not in favor of woman suffrage The arguments that have been advanced by several parties here in favor of woman suffrage, although they have not convinced me, have placed the matter before me in many new lights. But I know there are arguments and objections that can be brought up on the other side that are fully as convincing. But I am in favor of leaving this whole matter with the future legislature of Montana to use their judgment and obey the will of the sovereign people of Montana.

Mr. Joy of Park: I would like to ask if another amendment is in order.

The Chairman: Yes, sir.

Mr. Joy of Park sent up an amendment which the Clerk read as follows: Amendment to Section 2. The legislature may in its discretion provide that the question of woman suffrage may be submitted to a vote of the people of Montana not oftener than once in four years and if a majority of the votes of the State shall favor such question then equal suffrage shall be extended to women.

The motion was seconded.

Mr Bickford of Missoula· That is a right which the State of Montana will have. It is a right that they would have at any time, and I know of no reason why a proposition of this kind should be presented to this convention at this time, unless it be for the purpose of delay or begging the question I say, sir, in view of all the arguments that have been advanced on the proposition, and the lack of arguments on the other side, that the amendment should prevail.

Mr. Maginnis of Lewis & Clarke: I had not thought to speak upon this subject, but the taunt of my friend from Missoula that all the argument has been made on one side and none on the other, has induced me to make some apology for the gentlemen who vote against the proposition. I take no issue with the gentlemen who have eulogized the intelligence and the virtue of women. I fully agree with the gentlemen who said they possessed three-fourths of the virtues and more than half the intelligence of the country; I would even increase the ratio. But I cannot see that any argument that has yet been made goes to the foundation of this question. After all said and done the primary element behind all government is force. Why do the majority rule? Let us consider for a moment the philosophy of government and the reason of things. Human society is so imperfect that the rule of forces still prevails and will prevail as long as man in his unregenerated nature occupies this planet. And it is because two men are more powerful and can put down one man, and because three men are more powerful and can put down two men, that the right of the majority upon which governments are founded is now being recognized by mankind. The world has simply made an advance, Mr. Chairman, in one particular. Instead of testing the relative strength of numerical bodies of men pitted against each other on the battle field, they do it at the ballot box; and as the experience and history of the world has taught that the majority can and do and will enforce their views upon the minority, and majority have both wisely concluded not to fight but to count—not to meet each other on the field of battle, but to meet each other at the ballot box, recognizing after all that the majority must rule. Upon this fundamental principle the American government is founded. The conditions of her nature, the limitations of her sex, forever preclude woman from being called upon to enforce the decrees of government. It is admitted even by the gentlemen who favor female suffrage that it is not a natural right, that it is a political privilege bestowed by governments upon its citizens in such manner as shall best tend to preserve and perpetuate and maintain that government against all the perils that threaten human governmen. First it was exercised by the rich only. It was claimed that the rights of property in a State entitled a man to direct the destines of that State. That was gradually extended. The qualifications in all property were being made smaller and smaller all the time. And finally manhood suffrage was based on. what? It was based upon this principle, that so long as a man is liable to be called upon by the Sheriff, by the Constable or officer of Law, or in the last grand arbitrament of war by the nation itself, to allign himself in line of battle in order to enforce the decrees of that nation, that he should be entitled to suffrage. It was the proposition that the poor man's life being as sacred, being as much to him—for what is greater to any man than his own life—as the rich man's property was to him, that he should be made his equal at the ballot box in order to make the laws which he might be called upon to imperil that life to enforce. As I have said, the other sex with all their virtues are forever precluded from coming into those conditions. Suppose we had a State with a majority of female voters, as Massachusetts has today. Suppose that they unanimously should enact a line of law which the minority, the other sex, were called upon to enforce, what sort of a government would you have, or on what sort of foundation would it be based? It is upon this ground that we must maintain the government as it is unless it is going to perish. Why, one of my friends talked about the enfranchisement of the negro during the war—the illiterate negro of the south. From the very moment that the uniform of the United States was put upon the black man and the musket placed in his hands to defend the country, it became evident that he had to become enfranchised. That is what gave the ballot to the negro of the south, that placing in his hands the arms of this government and arraying him in defense of your flag. No man can have a profounder regard for women than I have; but I undertake to say in this informal way, without having thought of this subject—and perhaps I ought not to be so presumptuous as to give my unformed thoughts to so wise a convention—but I undertake to say that woman has her own great sphere in this world. She is the regenerator of humanity. It is hers to perpetuate. She is the educator, the preparer in the school room, in the home and everywhere; and in every station she ennobles and adorns man. Man, on the other hand, has his own proper sphere. It is his to conquer the savage world, to subdue the elements, to build, to conquer, to impress his power upon the material forces of nature, and to combat with all the elements of the world. They are as distinct in their spheres as are the heavens and the earth, and one is as exalted and as ennobled as the other. They were made so by the Almighty Ruler who made this universe, and I do not believe that any body of men can ever by any laws overturn the disposition of the Creator. Therefore, it is in no ungenerous and in no unchivalric spirit that I oppose this measure. I stand not upon those petty objections that have been brought against female suffrage. I believe with the gentleman from Silver Bow that women, if it was their right, would ennoble in a certain sense the ballot. Whether on the other hand participation in politics would do as much for her I very much doubt. I know she is the salt of the earth, but I know also that like that pure and crystal salt she would perhaps be contaminated and regenerated by mixing with the things which it was intended she should preserve. Upon these grounds the vast majority of mankind have based these governments and have maintained and perpetuated the difference between the sexes. There is no man that stands abreast with me in giving to women all equal chances in the career of life—of taking away from her all the shackles that have been put upon her—of opening in science and art and poetry, and in everything, even in the lighter employments of government all the avenues which can be opened for her. I do not want to make women, their lives, and their future dependent solely upon the will, the tenderness, or the caprice of man. I know that under the old conditions under which we have always lived, that the women have filled the greatest places in the world. In charitable institutions in our own country today they stand at the head of institutions which take care of more property and administer more affairs than even a State. There are institutions in this country with women at the head of them, that own more property than is assessed in Montana and administer more affairs than any government that we shall frame here to administer. It is not then because I do not understand her capacity; it it not because I underrate her intelligence; it is not because I have not a high appreciation of the innate virtue and character of the sex that saved us all that I take this position. But I take it that in this matter of government she is out of place, that government is—I will go back again and say, is founded upon force, and man is the force that must perpetuate and preserve it and hold it if it is to be preserved; and that they should do, not for their own sake, but for the sake of the women who look to them to perform that part in the economy of nature and of government. But, my friends, I recognize also that if the women of this country wanted the franchise, they would have it no matter who stood in the way. Right or wrong, wise or unwise, we would give it to them. But they do not. An English statesman said that a few grasshoppers in a fence corner make more noise than all the noble herds of British cattle browsing beneath the oaks, and one of our own poets said that the "Shallows murmur when the deeps are dumb," and I undertake to say that if this question should be left as I propose it shall be left—or as I think it should be left, to the vote of the women of this Territory, it will be voted down today—and we have no right to force upon them that which they do not want. (Applause) In the State of Massachusetts women can vote at all school elections. While the gentlemen were speaking I took from some statistics here some facts which I shall quote. In that State there are 442,616 male voters and 486,300 female voters eligible under that clause of the laws of Massachusetts. Of these in all the times since that law was passed only 4,219 women registered, and only 1,911 voted (applause) with all the clamor of all the advocates of this matter in the state of Massachusetts where it is most widely and most clamorously advocated.

Mr. Robinson, of Deer Lodge: Does it say what kind of women they were?

Mr. Maginnis, of Lewis & Clarke: I do not know. We will take it for granted that they were good women—and the cause that called them out at a certain school election in Boston where certain religious questions were introduced. Now, it is said that women are always guided by the best moral influences. Why, gentlemen, one reason why I have always been afraid of that is that the women might be guided by the preachers and the ministers. Now, I have made a speech in favor of God in the constitution. I believe in religion, although I have not followed it myself. I have been one of those whose faltering footsteps have wandered from the track of faith that shone beneath the Star of Bethlehem over eighteen hundred years ago. But I do believe that the history of all this world shows that the worst government is the theocratic government—a government of priests, a government of ministers, a government of theologians, who least know the interests of mankind, and who of all classes of men are the least adapted to legislate for them. (Applause) I believe the influences of other classes of men upon the women would be unwholesome. My old friend Bailey Payton told me once when I was down there in the agony of the rebellion, among the burnt homes and the ensanguined fields of the south, he said, "the devil moved the preachers, and the preachers moved the women and the women got the men into this unfortunate and unholy war." (Applause) So far on the ground of their influence and politics. But, my friends, I undertake to say, and I believe that the lines on which man and woman operate are equally noble, each in their own sphere. I do not believe in this new constitution we ought to bring them together. I do not believe that we ought to make that experiment, and I do not believe that we ought to leave it to the Legislature. I believe that this question of the extension of the suffrage is a question that should be decided by the people of Montana, if it is decided at all. I am willing to vote, if you choose, to have a clause put in that constitution by itself which shall submit this question to the people with the constitution; but I am not willing that the constitution itself shall be made a stalking-horse to carry through a proposition of which only a minority approve and to which a great majority of the men and women of this territory are opposed. (Applause) Consequently I stand here and offer this imperfect apology for the votes of the men who say that we shall neither have woman suffrage in this constitution, nor shall we leave it to the Legislature, or a vote of the people to perfect it hereafter.

Mr. Burleigh, of Custer: I have listened with a great deal of attention to the remarks of my friend from Lewis & Clarke County. He started out with a doctrine something like that of the old preacher who preached the doctrine of predestination to all intents and purposes. Everything was hell-fire and damnation, except to all those who were predestined to be saved; and I felt as though he had got off the track, and then I found he had embraced something of the spirit of forgiveness towards the east. But I say, take the main drift of his argument and it is in perfect accord with the doctrines promulgated in regard to the women during the Roman Empire in pagan days; woman was a useful institution made by the Almighty to subserve the laws, and perpetuate the population, so that the State might not die of ennui. It is precisely the doctrine enunciated in Turkey today in the harem. It is the same doctrine enunciated in this country, or that was enunciated in this country under the influences and the dogmas of that same Star of Bethlehem to which the gentleman refers in such feeling terms—and I was particularly struck with that beautiful illustration of his—during the dark days of the old common-wealth. The doctrine was that woman was created for a purpose, and she had to be the slave of man, to subserve his purpose, to enable him to gratify his unholy desires, and to use as his slave. It is the same doctrine that is enunciated by the Sioux Indians and the Blackfeet and the Flatheads today, when they take their squaws and work them for their own purpose. What do we propose to do? Is it true that God Almighty made woman, and as tradition says, carved her from the rib from the side of man, and made her his equal, and then consigned her to eternal slavery without the hope of resurrection or of freedom of redemption? By no means. You show me that characteristic in God and I will vote then for another God in the constitution. (Laughter) Now, we propose to come in here and profit by the lessons of the past, by the hard austere teachings of the past, by the practices and the teachings of the pagan world. I hope that all our barbarous practices and traditions are fast giving place to a better state of civiliation. By the gracious dispensation of God, woman has been made the helpmate and the complement of man, and I propose to extend to her the benefits and blessings of that Being whose advent into this world was heralded by the Magi of the East by the Star of Bethlehem which guided them to the place where the Savior reposed in the manger. I propose and I will do it—I will stand by in defense of the right of women to every privilege which I enjoy under the constitution which she wants and asks for, and I will not withhold one pot or title from her. I have a wife; I had a mother; I have sisters; and there is not one of them who is not as thoroughly prepared—as well qualified to exercise all the functions of state, and better, than I am, intellectually, morally and as well physically. I say here that I will stand by that principle which is sought to be incorporated into the constitution, or rather, reserved by the constitution to be extended to the people of this Territory to extend the free and universal right of suffrage to the women of this land wherever they shall see fit to enjoy it. I know it may be unpopular in some districts, but I am not a supplicant for popular favor. I came here to impress my own thoughts and views upon this convention. If my constituents like it, it is well, and if they don't, I don't care. I did not ask their suffrages, they sent me here for better or for worse, as the fellow said—it may be for worse or it may be for better—but I have enunciated my views upon this question and I will stand by them, and I finish as I begun by asserting that I believe in extending the right of suffrage to the women of the land wherever and whenever they want it.

Mr. Courtney, of Silver Bow. I did not intend to make any remarks upon this floor but I had a deep feeling or conviction as to my position on this question, and I was exceedingly proud when Major Maginnis got up and took the side of the question which he did I have often times heard of Major Maginnis' ability to make a speech, but I avow right here and on this occasion that I am now thoroughly convinced of his powers and force of eloquence. A gentleman got up a few moments ago and said that all the arguments was on his side. I can return the taunt now, sir, and say with every reason that for arguments upon which to base a position on this question, I think, sir, that we have the better side. Now, with all the eulogies that have been offered upon women in these speeches I heartily concur. I believe they possess all the virtues and all the intelligence the gentlemen have claimed for them. I believe they exert an influence on the world that is for good. I believe the great men of the world have attributed to their mothers the foundations from which they imbibed their greatness. But, sir, I take my position from this standpoint. I look around the world today and I find that here in this country women occupy a position equal to that occupied by them in any country in the world. I don't know that the men of this country are imposing upon the women If it should be indicated to me that the men were imposing upon the women of this generation, my sympathies would go with the women; but, if I understand the way things are being run, it does seem to me that if anyone has the better of it, it is certainly the women I don't know what privileges a man can enjoy in this country that is not extended to women save that of suffrage, and I don't know that that would make women any better. If that conviction could be removed by any of the arguments that have been adduced here in favor of woman suffrage, possibly I would not occupy that position just now; but I am frank to say with all due respect to the gentlemen on the other side that there was very little solid argument adduced by them. Now, sirs, I say to you that I have a deep conviction upon this question. I shall certainly vote against the proposition—not, I do not think, through any antipathy for women but just simply because I think that the women of our country are transcendent over those of any other country, and that they are attaining their position by the liberal conditions under which they live, and by the manner in which our country is treating them. And if it could be proved to me beyond peradventure that women should occupy a higher sphere by reason of suffrage, then I would simply go over to the other side. But speaking, as I sincerely do, I believe that women have the best of the question as it is, and I am thoroughly satisfied that I am not occupying an ungallant position when I say that I am willing to let them have the better of the question, and I am not willing to impose upon them the responsibilities of suffrage.

Mr. Clark, of Silver Bow I do not wish to enter into any discussion of the question of female suffrage, as that is not the question now before the convention, but simply to make a few observations as pertaining to the subject of the amendment upon which we are now acting. It has been said that women do not care to have the right of suffrage Now, this may be true. It may be that they lack the progress made in this movement for the last fifty years, as stated by the gentleman from Missoula. It may be owing to this fact, but we have no means of knowing what the wishes of the women are on this subject, and until we endow them with the privilege of suffrage so that they may make their views heard substantially, we never will know what are the wishes of the women of this Territory. I am in favor of giving to women everything that they want, upon the principle that I have the utmost confidence in their intelligence and their ability to decide what shall properly belong to them as citizens of the State, and upon this proposition I am in favor of leaving open the way in this constitution whereby, if it be demanded in the future, or if the women come forward in the future, although they may not have the privilege of voting, they may find some way of making their influence felt, and demand that the right of suffrage shall be extended to them. I believe in making the way open, and not hedging around them the impossibility of ever obtaining these rights if they should so desire them. Now, it is said that women are so constituted physically, and the cares of home and the duties of society are such that it disqualifies them from exercising this right of suffrage. Now, if this be the case, I am willing to leave it to the ladies themselves to judge upon this matter. It is said the women may not want to vote. We have thousands of men in Montana today who do not want to vote unless they can get three dollars apiece for their vote, and I venture to say that if you extend the right of suffrage to women that you will never find them going up to the polls and selling their votes. It is also said that women by their association with men in the performance of his right of suffrage at the ballot box may become contaminated. I say that the position of the women today is higher and nobler than it ever has been, and that it is still advancing; that we have given them everything except this right of suffrage; and I have this confidence in them, that in consequence of their commingling with men in the affairs of the State and exercising the right of suffrage instead of their being contaminated by that influence, on the other hand, they will elevate and bring men gradually, if it is possible to do it, to their high level. Hence, I say that while it may not be expedient to adopt this plank in the constitution today, I say that it is impracticable to submit it to the voters of this Territory in connection with the constitution, because if this is any evidence of the feeling today upon the subject in the Territory, it will inevitably be voted down, and then we will have to face the impossibility of its ever being brought up again except by a constitutional amendment. I can see no objection to the clause that has been proposed by the gentleman from Missoula to leave a way open so that if in the future the women of Montana desire to exercise the right of suffrage that that privilege shall not be withheld from them. (Applause)

Mr. Bickford, of Missoula: I desire to engage the attention of the convention for just one moment in regard to this subject, and commencing, I will say that "Peace hath its victories no less renowned than war." I deny the proposition advanced by the gentleman from Lewis & Clarke County that the right of suffrage originates with mankind because they have power to enforce their dictates by the arbitrament of war. I say that force has nothing to do with suffrage whatever. If the argument of the gentleman should be followed to its final conclusion, the only result we can arrive at is that John Lawrence Sullivan is the only man in the United States who is competent to vote at the present time. (Applause) The arbitrament of war is not the criterion. I say that according to the argument of the gentleman advanced here upon this floor that the right of suffrage should be granted to the people of this country by the criterion of intelligence, by the criterion of honesty of men and love of country, by all those criterions by which we judge of the fealty of a man towards the country which we all love. I say that the physical force of man has nothing to do with it. It is their ability to choose between the right and the wrong. So far as the women of this country are concerned, when it comes to a question of war, I want to say that if the women had their voice in the affairs of this nation in 1859 and 1860 that the Civil war would never have taken place; that their sense of justice, that their sense of right, that their wisdom would have been such that the war would have been avoided; and although I was so young at that time as not to be able to engage in the struggle, I say that in view of the light of subsequent events that if the women of that day had had their voice in the elections of the country, that their calm judgments would have prevailed over the passions of men. I say, sir, that when you take the arbitrament of war, the power to enforce the dictates of politics or the mandates of a country, as the criterion by which you are to be guided in the bestowal of this right of suffrage, that you take a false position; that there is absolutely nothing in it, because then you go to the argument of physical force and not of mental superiority. It is a matter of pride with the people of the United States that within their limits, within the limits of this country, women occupy a higher and nobler and a better sphere than they do anywhere else. We point to it with pride because it is an evidence of our advancing civilization. We know that in China when a man becomes the father of a daughter that he is in doubt whether he shall consign it to the river or rear it. We say that that is an evidence that that man is a heathen. When we look at the Oriental countries and see the position that women are there placed in, we point with pride to our own free institutions—and we say, look at the advanced plain, the high elevation upon which the women of America stand. It is a curious coincidence that the Isle of Man was the first place to bestow upon women the right to vote, but it is nevertheless an historical fact. If we are self-respecting men with love of country in our hearts we shall put in this constitution the provision which I have offered to this convention. I say it is right, not only because it is the spirit of the progress of the age—I say it is right to put it in here, because this convention does not contain all the wisdom of *the State of Montana; and although we may at the present time* possess opinions of our own, yet subsequent to this time there will be people who will have some opinions as well as to right and wrong, and they should have some opportunity of expressing those sentiments in the Legislature of Montana.

Mr. Robinson, of Deer Lodge: I move that the committee rise, report progress and ask leave to sit again.

The motion was seconded.

The Chair stated the motion.

Mr. Rickards, of Silver Bow: Before we vote, just as a matter of privilege, I would say that one of the members cannot attend the night session and cannot vote upon this question.

Mr. Clark, of Silver Bow. A great many friends of the measure are not in the hall.

Mr. Maginnis, of Lewis & Clarke: A great many friends against the measure are not in the hall.

The Chair put the question on the said motion of the gentleman from Deer Lodge (Mr. Robinson), and a division being called for the same was declared lost by a vote of thirty in the affirmative to thirty-five in the negative.

Several members called for the question.

The Chairman. The question comes up on the adoption of the fourth subdivison of the substitute offered by the gentleman from Missoula to Section 2 of Article 12.

Mr. Collins of Cascade called for the reading of the subdivision.

The Clerk read the same.

Mr. Collins, of Cascade: It seems to me that this matter will bring the whole thing to a solution. I think the committee had better rise and take a vote.

Mr. Joy, of Park: Mr. Chairman, I insist that my motion be treated properly and take its course.

The Chair put the question on the motion of the gentleman from Park (Mr. Joy) and a vote being taken the same was declared lost.

The Chairman: The question now comes up on the original proposition, being the fourth subdivision of Bickford's substitute for Section 2.

The Chair put the question on the said subdivision of the gentleman from Missoula (Mr. Bickford), and a division being called for the same was declared lost by a vote of twenty-nine in the affirmative to thirty-four in the negative.

Mr. Bullard, of Jefferson: I move the committee do now rise, report progress and ask leave to sit again.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Jefferson (Mr. Bullard), and a vote being taken, the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

Mr. Cooper, of Gallatin: Mr. President, the committee of the whole have had under consideration General File No. 12. They have made some progress and ask leave to sit again.

The President: The Chairman of the committee of the whole reports that the committee of the whole have had under consideration General File No. 12, that they have made some progress and ask leave to sit again.

Mr. Marrion, of Missoula: I move that the convention take a recess until eight o'clock.

The motion was seconded.

Mr. Burleigh, of Custer: I move we adjourn.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer that the convention adjourn, and a vote being taken, the same was declared carried.

The convention stood adjourned until Friday, July twenty-sixth, eighteen hundred and eighty-nine at ten A. M.

EIGHTEENTH DAY.

Friday Morning, July 26th, 1889.

The convention was called to order at ten A. M. by the President.

The Clerk called the roll.

The President: The Chair desires to state that Mr. Parberry of Meagher desires to be excused. If there be no objection the gentleman will be excused.

Mr. Mayger, of Lewis & Clarke: Mr. Gillette was called away on business and asked to be excused for the day.

The President: If there be no objection the gentleman will be excused.

The Chaplain offered prayer.

The Clerk read the Journal of the previous day.

Mr. Myers, of Yellowstone: I have a report here which I wish to submit by request of the Chairman of the Committee on Irrigation.

The President: The report of the Chairman of the Committee on Irrigation will be read.

The Clerk read as follows:

"Mr. President: Your Committee Number Twenty-four on Irrigation have had proposition No. 20, introduced by Luce of Gallatin, on Irrigation, under consideration, and have instructed me to return the same without recommendation, as the substance of the same has been incorporated in the report of the Committee on Irrigation.

(Signed) PARBERRY, Chairman."

The Clerk also read as follows:

"Mr. President: Your Committee on Irrigation have instructed me to make the following report and ask that the same be incorporated in the constitution.

(Signed) PARBERRY, Chairman."

Article........, Section 1. The water of every natural stream not heretofore appropriated is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the State, subject to appropriation as hereinafter provided.

Section 2. The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water.

Section 3. All persons and corporations shall have the right of way across public, private and corporate lands for the construction of ditches, canals and flumes for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes and for drainage upon payment of just compensation.

Section 4. The General Assembly shall provide by law that the Board of County Commissioners in their respective counties shall have power, when application is made by them by either party interested, to establish reasonable maximum rates to be charged for the use of water, whether furnished by individuals or corporations.

The President: If there be no objection the report of the Committee on Irrigation will be received and referred to the committee on printing with instructions to be printed.

Mr. J. K. Toole, of Lewis & Clarke: The Chairman of the Judiciary Committee is unavoidably absent this morning and requested me to present the following report.

The President. The report of the Chairman of the Judiciary Committee will be read

The Clerk read as follows:

Mr. President: Your Committee on Judiciary to whom was referred back Proposition No. 21, Article on Judicial Departments, to report in proper form certain amendments to the same which had been adopted in convention, herewith report back said proposition with the accompanying amendments, which they recommend be adopted as part of said proposition. Some of the amendments adopted to some of the sections make them conflicting or at least uncertain, so that it has been difficult to determine in such instances what the intention of the convention was in adopting such amendments, but, so far as they could, your Committee have endeavored to express what seemed to be desired and intended by the convention. The references to sections and lines are to the printed copies of the proposition. All of which is submitted.

(Signed) W. W. DIXON, Chairman.

Amend section 1 by inserting "a" after the word "as" in line 1.

Amend section 8 so as to read as follows: Sec. 8 There shall be elected at the first general election provided for by this constitution, one Chief Justice and two Associate Justices of the Supreme Court. At said first election the said Chief Justice shall be elected to hold his office until the general election in the year 1892 and one of the Associate Justices to hold his office until the general election in the year 1894, and the other Associate Justice to hold his office until the general election in the year 1896, and each shall hold until his successor is elected and qualified. The terms of office of said Justices and which one shall be Chief Justice shall at the first and all subsequent elections be designated by ballot. After said first election one Chief Justice or one Associate Justice shall be elected at the general election every two years, commencing in the year 1892 and if the Legislative Assembly shall increase the number of Justices to five, the first term of office of such additional Justices shall be fixed by law in such manner that at least one of the five Justices shall be elected every two years. The Chief Justice shall preside at all sessions of the Supreme Court and in case of his absence the Associate Justice having the shortest term to serve shall preside in his stead.

Amend section 11 by striking out the word "or" before the word "possession" in line 2 and inserting instead the word "of" and by adding "s" to the word "action" in line 13 and by inserting the word "held" after the word "person" in line 18.

Amend section 13 so as to read as follows: Sec. 13. Until otherwise provided by law the Judicial Districts of the state shall be constituted as follows: First District, Lewis & Clarke County; Second District, Silver Bow County; Third District, Deer Lodge County; Fourth District, Missoula County; Fifth District, Beaverhead, Jefferson and Madison Counties; Sixth District, Gallatin, Park and Meagher Counties; Seventh District, Yellowstone, Custer and Dawson Counties; Eighth District, Choteau, Cascade and Fergus Counties.

Amend section 18 by striking out the words "other County officers" in line 3 and inserting instead the words "the District Judge," and also by striking out the word "District" in line 3 and inserting instead the word "said."

Amend section 19 so as to read as follows: Sec. 19. There shall be elected at the general election in each county of the state, one County Attorney, whose qualifications shall be the same as are required for a Judge of the District Court, except that he must be over twenty-one, but need not be twenty-five years of age, and whose term of office shall be two years, except that the County Attorneys first elected shall hold their offices until the general election in the year 1892, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

Amend section 20 by striking out the word "as" in line 5. Amend Section 27 by striking out the letters "es" at the end of the word "processes" in line 1.

Amend section 29, so as to read as follows: Sec. 29. The Justices of the Supreme Court and the Judges of the District Courts shall each be paid quarterly by the state, a salary which shall not be increased or diminished during the terms for which they shall have been respectively elected. Until otherwise provided by law the salary of the Justices of the Supreme Court shall be four thousand dollars per annum each, and the salary of the judges of the District Courts shall be three thousand, five hundred dollars per annum each.

Amend Section 30 by inserting in line 2 after the word "fee" the words "Allowance, Mileage."

Amend section 36 by striking out the word "cause" in line 1, and inserting instead the words "civil action." Also by inserting after the word "bar" in line 2 the words "of the state."

Mr. Bickford, of Missoula: I move you, sir, that the report of the committee be received and adopted and that the bill as adopted by the Judiciary Committee be read at length, the rules suspended and the bill placed upon its final passage.

Motion was seconded.

The Chair put the question on the said motion of the gentleman from Missoula (Mr. Bickford) and a vote being taken the same was declared carried.

The President: The Clerk will read the amendments. The convention will first pass upon the amendments that are offered by the Judiciary Committee. Then if any other amendments are offered they will be received.

The Clerk read as follows: Amend section one by inserting "a" after the word "as" in line one.

Mr. J. K. Toole, of Lewis & Clarke: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. J. K. Toole) and a vote being taken the same was declared carried.

The Clerk read as follows: Amend section 8 so as to read as follows: Sec. 8. There shall be elected at the first general election provided for by this constitution, one Chief Justice and two Associate Justices of the Supreme Court. At said first election the said Chief Justice shall be elected to hold his office until the general election in the year 1892 and one of the Associate Justices to hold his office until the general election in the year 1894, and the other Associate Justice to hold his office until the general election in the year 1896, and each shall hold until his successor is elected and qualified. The terms of office of said Justices and which one shall be Chief Justice shall at the first and all subsequent elections be designated by ballot. After said first election one Chief Justice or one Associate Justice shall be elected at the general election every two years commencing in the year 1892 and if the Legislative Assembly shall increase the number of Justices to five, the first term of office of such additional Justices shall be fixed by law in such manner that at least one of the five Justices shall be elected every two years. The Chief Justice shall preside at all sessions of the Supreme Court and in case of his absence the Associate Justice having the shortest term to serve shall preside in his stead.

Mr. J. K. Toole, of Lewis & Clarke: I move the adoption of the amendment to section 8.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Toole) and a vote being taken the same was declared carried.

The Clerk read as follows: Amend section 11 by striking out the word "or" before the word "possession" in line 2 and inserting instead the word "of", and by adding "s" to the word "action" in line 13, and by inserting the word "held" after the word "person" in line 18.

Mr. J. K. Toole of Lewis & Clarke: I move the first amendment to the section be adopted by striking out the word "or" before the word "possession" in line two and inserting instead the word "of."

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Toole) and a vote being taken the same was declared carried.

Mr. J. K. Toole, of Lewis & Clarke: I move that the second amendment be adopted by adding the letter "s" to the word "action" in line 13.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Toole) and a vote being taken the same was declared carried.

Mr. J. K. Toole, of Lewis & Clarke: I also move the adoption of the third amendment by inserting the word "held" after the word "person" in line 18.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Toole) and a vote being taken the same was declared carried.

The President: What is the pleasure of the Convention concerning the section now adopted.

Mr. Burleigh of Custer: I move the adoption of the section as amended.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Burleigh) and a vote being taken the same was declared carried.

The Clerk read as follows: Amend section 13 so as to read as follows: Sec. 13. Until otherwise provided by law the Judicial Districts of the state shall be constituted as follows: First District, Lewis & Clarke County; Second District, Silver Bow County; Third District, Deer Lodge County; Fourth District, Missoula County; Fifth District, Beaverhead, Jefferson and Madison Counties; Sixth District, Gallatin, Park and Meagher Counties; Seventh District, Yellowstone, Custer and Dawson Counties; Eighth District, Choteau, Cascade and Fergus Counties.

Mr. J. K. Toole, of Lewis & Clarke: I move the adoption of the amendment to section 13.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Toole) and a vote being taken the same was declared carried.

The Clerk read as follows: Amend section 18 by striking out the words "other county officers" in line 3 by inserting instead the words "the District Judge," and also by striking out the word "District" in line 3 and inserting instead the word "said."

Mr. Bickford, of Missoula: I move the adoption of the first amendment to section 18 to strike out the words "other county officers" in line 3 and insert the words "the District Judge."

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Missoula (Mr. Bickford) and a vote being taken the same was declared carried.

The President: What is the pleasure of the convetion concerning this section as amended.

Mr. Bickford, of Missoula: I move the adoption of the section as amended.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Missoula (Mr. Bickford) and a vote being taken the same was declared carried.

The Clerk read as follows: Amend section 19 so as to read as follows: Sec. 19. There shall be elected at the general election in each county of the state, one county Attorney, whose qualifications shall be the same as are required for a Judge of the District Court, except that he must be over twenty-one but need not be twenty-five years of age, and whose term of office shall be two years, except that the County Attorneys first elected shall hold their offices until the general election in the year

1892, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the State and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

Mr. Hartman, of Gallatin: I move the adoption of the amendment

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Gallatin (Mr. Hartman) and a vote being taken the same was declared carried.

The President: This is intended, as the Chair understands it, as a substitute for section 19, and hence it will be entered in place of section 19 in the printed copy.

The Clerk read as follows: Amend section 20 by striking out the word "as" in line 5.

Mr. Burleigh, of Custer: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Burleigh) and a vote being taken the same was declared carried.

The President: What is the pleasure of the convention concerning this section as amended.

Mr. Bickford, of Missoula: I move the adoption of the section as amended.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Missoula (Mr. Bickford) and a vote being taken the same was declared carried.

The Clerk read as follows: Amend section 27 by striking out the letters "es" at the end of the word "processes" in line 1.

Mr. J. K. Toole, of Lewis & Clarke: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Toole) and a vote being taken the same was declared carried.

The President: What is the pleasure of the convention concerning this section as amended.

Mr. Loud, of Custer: I move the adoption of the section as amended.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Loud) and a vote being taken the same was declared carried.

The Clerk read as follows: Amend section 29 so as to read as follows: Sec. 29. The Justices of the Supreme Court and the Judges of the District Courts shall each be paid quarterly by the state a salary which shall not be increased or diminished during the term for which they shall have been respectively elected. Until otherwise provided by law the salary of the Justices of the Supreme Court shall be four thousand dollars per annum each, and the salary of the Judges of the District Courts shall be three thousand five hundred dollars per annum each.

The President: This is intended as a substitute as the Chair understands it for section 29.

Mr. Burleigh, of Custer: I move the adoption of the substitute.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Burleigh) and a vote being taken the same was declared carried.

The Clerk read as follows: Amend section 30 by inserting in line 2 after the word "fee" the words "allowance, mileage."

Mr. Collins, of Cascade: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Cascade (Mr. Collins) and a vote being taken the same was declared carried.

The President: What is the pleasure of the convention concerning this section as amended.

Mr. Collins, of Cascade: I move the section as amended be adopted.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Cascade (Mr. Collins) and a vote being taken the same was declared carried.

The Clerk read as follows: Amend section 36 by striking out the word "cause" in line 1 and inserting instead the words "civil action."

Mr. Burleigh, of Custer: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Burleigh) and a vote being taken the same was declared carried

The Clerk read as follows· Also by inserting after the word "bar" in line 2 the words "of the state."

Mr. J. K. Toole, of Lewis & Clarke: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Toole) and a vote being taken the same was declared carried.

The President: That comprises all the amendments offered by the Judiciary Committee.

Mr. Rickards, of Silver Bow: I move the section be adopted as amended.

The motion was seconded

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Rickards) and a vote being taken the same was declared carried.

Mr. Burleigh, of Custer: I now move the adoption of Proposition No. 21, as amended, as a part of the constitution of the state of Montana.

The motion was seconded

The President. It is moved and seconded that proposition No. 21 be now adopted as a part of the constitution of the state of Montana. The ayes and nays will be entered on the Journal.

The Clerk called the roll.

The vote stood as follows·

Ayes: Aiken, Bickford, Breen, Browne, Bullard, Burleigh, Burns, A F.; Burns, A. J.; Burns, Edward; Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Courtney, Craven, Durfee, Dyer, Eaton, Hammond, Hartman, Haskell, Hatch, Hershfield, Hickman, Hobson, Hogan, Joy, Joyes, Kanouse, Kennedy, Knippenberg, Knowles, Kohrs, Loud, Maginnis, Marrion, Marshall, Mayger, McAdow, Mitchell, Muth, Ramsdell, Reek, Robinson, Rotwitt, Rickards, Sargeant, Schmidt, Stapleton, Toole, Jos K.: Toole, J. R.; Warren, Watson, Whitehill, Winston, Witter. Mr. President—61.

Nays: None.

Absent: Brazleton, Dixon, Gillette, Middleton, Field, Goddard, Myers, Buford, Gaylord, Graves, Gibson, Luce, Parberry, Webster—14.

The President: The motion to adopt is carried, and Proposition No. 21 becomes a part of the constitution of the state of Montana. The Chair is in receipt of a report of the Committee on Finances of the State. It is very lengthy and unless there is a desire to have it read it will be referred to the printing committee to be printed. It is so referred.

The report of the Committee on Finances which was referred to the Committee on Printing was as follows:

ARTICLE

Revenue and Taxation.

Section 1. The necessary revenue for the support and maintenance of the state shall be provided by the Legislative Assembly which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specially provided for in this article. The Legislative Assembly may also impose a license tax, both upon persons and upon corporations doing business in the state.

Sec. 2. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation; and such other property as may be used exclusively for agricultural and horticultural societies, for educational purposes, actual places for religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity may be exempt from taxation. The Legislative Assembly may, in its discretion, exempt from taxation other property in addition to that herein specified, but all exemptions shall only be by general law.

Sec. 3. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after patent shall have been issued therefor by the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim, is used for other than mining purposes and has a separate and independent value for such other purposes, in which case said surface ground or any part thereof, so used for other than mining purposes, shall be taxed at its value for such other purposes, as provided by law; and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims shall be taxed as provided by law.

Sec. 4. The Legislative Assembly shall not levy taxes upon the inhabitants or property in any county, city, town or municipal corporation for county, town or municipal purposes but it may by law invest in the corporate authorities thereof powers to assess and collect taxes for such purposes.

Sec. 5. Taxes for city, town and school purposes may be levied on all subjects and objects of taxation, but the assessed valuation of any property shall not exceed the valuation of the same property for state and county purposes.

Sec. 6. No county, city, town or other municipal corporation, the inhabitants thereof nor the property therein, shall be released or dischargd from their or its proportionate share of state taxes.

Sec. 7. The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this state or doing business therein shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this constitution exempted from taxation.

Sec. 8. Private property shall not be taken or sold for the corporate debts of municipal corporations.

Sec. 9. The rate of taxation of real and personal property for state purposes in any one year shall never exceed three (3) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to one hundred million dollars ($100,000,000) the rate shall not exceed two and one-half (2½) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to three hundred million dollars ($300,000,000) the rate shall never thereafter exceed one (1) mill on each dollar of valuation; unless a proposition to increase such rate, specifying the rate proposed and the time during which the same shall be levied shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election.

Sec. 10 All taxes levied for state purposes shall be paid into the state treasury, and no money shall be drawn from the treasury but in pursuance of specific appropriations made by law.

Sec. 11. Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

Sec. 12. No appropriations shall be made nor any expenditure authorized by the Legislative Assembly, whereby the expenditure of the state during any fiscal year shall exceed the total tax then provided for by law and applicable to such appropriation or expenditure, unless the Legislative Assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in section nine (9) of this article, to pay such appropriations or expenditure within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state or assist in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years.

Sec. 13. The State Treasurer shall keep a separate account of each fund in his hands, and shall at the end of each quarter of the fiscal year report to the Governor in writing, under oath, the amount of all moneys in his hands, to the credit of every such fund, and the place or places where the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. The Governor or other person or persons authorized by law, shall verify said report and cause the same to be immediately published in at least one newspaper printed at the seat of government, and otherwise as the Legislative Assembly may require. The Legislative Assembly may provide by law further regulations for the safe-keeping and management of the public funds in the hands of the treasurer; but, notwithstanding any such regulation, the treasurer and his sureties shall, in all cases, be held responsible therefor.

Sec. 14. The making of profit out of public moneys, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony and shall be punished as provided by law; but part of such punishment shall be disqualification to hold public office for a period of not less than ten years.

Sec. 15. The Governor, Secretary of State, State Treasurer, State Auditor and Attorney General shall constitute a State Board of Equalization; and the board of county commissioners of each county shall constitute a county board of equalization. The duty of the state board of equalization shall be to adjust and equalize the valuation of the taxable property among the several counties of the state. The duty of the county boards of equalization shall be to adjust and equalize the valuation of the taxable property within their respective counties. Each board shall also perform such other duties as may be prescribed by law.

Sec. 16. All property, except as in this section provided, shall be assessed in the county, city, town, township or school district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state shall be assessed by the state board of equalization, and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and school districts.

Sec. 17. The word property, as used in this article is hereby declared to include moneys, credits bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership; but this shall not be construed so as to authorize a taxation of the stocks of any company or corporation when the property of such company or corporation, represented by stocks, is within the state and has been taxed.

Sec. 18. The Legislative Assembly shall pass all laws necessary to carry out the provisions of this article.

Mr. Bickford of Missoula sent up report of the committee on printing.

The Clerk read as follows:

"Mr. President: Your Committee on Printing etc. have examined Proposition Nos. 14, 23 and 24 and find the same have been correctly printed.

(Signed) CONRAD, Chairman.

Mr. Browne of Choteau sent up report of the Committee on City, County and Town Organizations.

The Clerk read as follows:

Mr. President: Your Committee on City, County and Town Organizations to whom was referred petition from citizens of Glasgow, Dawson County, protesting against a clause being inserted in the constitution fixing a limit of three million dollars or more of assessable property for the creation of new counties, beg leave to report that we had under consideration the resolution introduced by Mr. Conrad pertaining to this matter, and reported same without recommendation.

(Signed) DAVID G. BROWNE, Chairman.

The President: If there be no objection this report will be placed on file and referred to committee of the whole.

Mr. Hershfield, of Lewis & Clarke: I am desirous of making a couple of reports which, if in order, I should like to present now.

The President: The report of the Chairman of the committee on miscellaneous provisions and subjects will be read.

The Clerk read as follows:

Mr. President: Your committee on miscellaneous subjects, to whom was referred a petition of the citizens of Deer Lodge County, relative to the Sunday law, respectfully report that the same proposition has been previously acted upon adversely by the committee, who see no reason for incorporating the subject in the constitution. We have sufficient faith in the people represented in the Legislative Assembly to entrust to their care the establishment of order and justice, to the end that all citizens may equally enjoy the best results of good government. Having agreed to leave this matter in the hands of the people and their representatives, we recommend that the petition be laid on the table.

(Signed) L. H. HERSHFIELD, Chairman.

The President: What is the pleasure of the convention concerning this report.

Mr. Maginnis, of Lewis & Clarke: I move the report be adopted.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & lCarke (Mr. Maginnis) and a vote being taken the same was declared carried.

The Clerk read as follows:

Mr. President: Your committee on miscellaneous subjects etc., to whom was referred proposition No. 25, by A. J. Burns, concerning the establishment of a mining bureau and the office of a commissioner of mines, beg leave to report that in their opinion it would not be wise to incorporate into the constitution the matters suggested in said proposition. We find that the laws now in existence amply cover the subject, and therefore recommend that proposition No. 25 be not adopted.

(Signed' L. H. HERSHFIELD, Chairman.

Mr. Witter, of Beaverhead: I move the adoption of that report.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Beaverhead (Mr. Witter) and a vote being taken the same was declared carried.

The President: Are there any other reports of standing committees?

Mr. Hogan, of Silver Bow: Mr. President, I move you that the convention resolve itself into committee of the whole for the further consideration of proposition No. 14, General File No. 12.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow and a vote being taken the same was declared carried.

The President called Mr. Cooper of Gallatin to the Chair.

IN COMMITTEE OF THE WHOLE

Mr. Cooper of Gallatin in the Chair.

The Committee was called to order.

The Chairman: The Chair will state that the Committee concluded its labors last night while under consideration of Section 2. The substitute offered by the gentleman from Missoula, Mr. Marrion, is now in order, to which there is an amendment pending offered by the gentleman from Jefferson, Mr. Breen. The question now is on the amendment of the gentleman from Jefferson.

The Clerk will read the amendment.

Mr. Marrion of Missoula: Will the Chair kindly instruct the Clerk to read the substitute first?

The Chairman: The Clerk will read the substitute.

The Clerk read as follows: "Substitute for Section 2. Sec. 2. Every male citizen of the United States and every male person of foreign birth who may have declared his intention to become a citizen of the United State according to law, not less than one nor more than five years before he offers to vote, who is over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections by the people."

The Clerk also read amendment to Section 2 of Article on Suffrage, offered by Breen:

Mr. Breen of Jefferson. I thought the whole business was disposed of yesterday.

Mr. Warren of Silver Bow: Mr. Chairman, I would like to know in what respect this substitute differs from what we voted on yesterday.

The Chairman. The Clerk can read the section as it now stands amended.

Mr. Hartman of Gallatin. Mr. Chairman, is a substitute in order at this time?

The Chairman: Yes, sir.

Mr. Hartman of Gallatin: I desire to offer one.

The Chairman. The gentleman from Gallatin offers the following substitute which the Clerk will read

The Clerk read as follows: Every male person of the age of twenty-one years or over possessing the following qualifications shall be entitled to vote at all general elections: First, he shall be a citizen of the United States; Second, he shall have resided in the state one year immediately preceding the election at which he offers to vote, and in the county, town or precinct such time as may be prescribed by law; provided, first, that no person convicted of a felony shall have the right to vote, unless he has been pardoned by the proper pardoning power; provided Second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of the constitution.

Mr. Warren of Silver Bow: I second the substitute.

Mr. Bickford of Missoula: Before the question is put I would call for the reading of the substitute offered by Mr. Marrion of Missoula. I am informed by Mr. Breen, who introduced an amendment yesterday, that his amendment was not intended to refer to the substitute offered by the gentleman from Missoula, and therefore that it might perhaps at this time be considered as having been passed upon.

The Clerk read the substitute offered by the gentleman from Missoula (Mr. Marrion).

Mr. Warren of Silver Bow: Mr. Chairman, it strikes me this substitute was practically disposed of yesterday on the motion of Mr. Clark of Silver Bow to strike out the words "or those who intended to become such". It strikes me we are wasting valuable time.

The Chairman: The question is upon the substitute of the gentleman from Gallatin

Mr. Hershfield of Lewis & Clarke: It seems to me there is a little difference of opinion as to what proposition we are voting on.

The Chairman: The question before the house is on the substitute of the gentleman from Missoula (Mr. Marrion). To that the gentleman from Gallatin offers a substitute. The question is on that substitute.

Mr. Winston of Deer Lodge: I ask for the reading of the substitute of the gentleman from Gallatin.

The Chairman: The Clerk will read the substitute of the gentleman from Gallatin.

The Clerk read the said substitute.

Mr. Robinson of Deer Lodge: I call for a division of the question, because there is one part of that I am willing to vote for, and the other part I am not.

Mr. Maginnis of Lewis & Clarke: I feel much the same way, and I call for a division of the question.

The Chairman. The question will be divided.

The Clerk read the first division.

Mr. Robinson of Deer Lodge: What I desire is the separation of that last clause.

The Clerk read the first of the last two provisions of the substitute offered by the gentleman from Gallatin.

Mr. Eaton of Park: Will the Chair kindly have that first division read again, so that we may know just exactly what we are voting on?

The Clerk read as follows: "Sec. 2. Every male person of the age of twenty-one years or over possessing the following qualifications shall be entitled to vote at all general elections; First, he shall be a citizen of the United States; Second, he shall have resided in the state one year immediately preceding the election at which he offers to vote and in the county, town or precinct such time as may be prescribed by law; provided first, that no person convicted of a felony shall have the right to vote unless he has been pardoned by the proper pardoning power.

Mr. Eaton of Park: Now, Mr. Chairman, permit me to ask, is all of that that the Clerk has just read considered as the first division now to be voted on?

The Chairman: The Chair so understands it.

Mr. Ramsdell of Missoula: I move to strike out all that part "provided he is pardoned for a felony". I think that Section 9 may provide such laws excluding certain persons from the right of suffrage, and it seems to me preferable to leave it that way.

The Chair put the question on the said first division of the substitute of the gentleman from Gallatin, as read by the Clerk, and a division being called for the same was declared carried by a vote of thirty six in the affirmative to thirteen in the negative.

The Chairman: The Clerk will read the second division.

The Clerk read as follows: Provided Second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution.

Mr. Stapleton of Silver Bow: Now, that comes under the objection I made yesterday, that it is in conflict with the constitution of the United States, that it provides qualifications for voters and allows men to vote who are in this territory at the time of the adoption of the constitution, and if they are outside of this territory they cannot vote.

Mr. Maginnis of Lewis & Clarke: I believe thoroughly in the point my friend made yesterday on the educational clause, that under the constitution which gives the same rights and privileges to citizens of one state which are given to citizens of other states, that I do not think *that would be constitutional.* It is different when it applies to foreigners, not coming from any particular state, but from a foreign country.

Mr. Knowles of Silver Bow: I do not think the provision referred to applies to a case of this kind at all; that is, that they should guarantee the same rights to the citizens of this state that they enjoy in other states. That, I think, if you will look at it, applies to the term citizen; and in relation to the other provision I do not think this a matter that will come in under that. I am very sure that that says that the citizens of the state shall have the same rights and immunities as the citizens of the other states.

A member: That is what it says.

Mr. Knowles of Silver Bow: Then it doesn't apply, because these parties are not citizens.

Mr. Stapleton of Silver Bow: I think I am clearly right. The citizens of each State shall be entitled to no more privileges and immunities than citizens in the several states. That is on page 14 of the Revised Statutes of the constitution of the United States. It is not the one Judge Knowles has spoken of at all. He speaks of the 14th amendment, and I am not speaking of that at all. I think if my friend will look on page 14, Article 5, Section 2, he will become satisfied I am right. I am willing to submit this to every lawyer present on this floor, and if I am not right I shall not urge it. I am well satisfied, however, that I am right.

Mr. Knowles of Silver Bow: Now I would ask Mr. Stapleton—(reading) "The citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several states". Now, in Oregon, they have a law at present that those who have simply declared their intentions to become citizens are citizens of Oregon. Now, if they are entitled to that privilege there, then when the citizen of Oregon comes here, who has simply declared his intention to become a citizen, he can vote here, because he is a citizen of Oregon; and it seems there are some fifteen states that have the same privileges: and if they are citizens of the State of Oregon or of these fifteen States, who have simply declared their intention to become citizens then if they came here and are entitled to the same rights and privileges and immunities as the citizens of those states, then they are entitled to vote; and I think it is perfectly proper for us to provide here that those who have exercised the right of suffrage up to this time shall still have that right.

Mr. Durfee of Deer Lodge: I think that almost every State has a law something like this. I remember some years ago that I resided in

New York State and was a voter there—a citizen. I went to the State of Maryland and was there during the presidential election. The laws there required a residence in the State for one year before a man could vote. Consequently I was not allowed the privilege of casting my ballot, because I had not been a resident of the State of Maryland for one year. Now, under this privilege spoken of by Mr. Stapleton, I had the same right as the citizens of Maryland to vote.

Mr. Maginnis of Lewis & Clarke: I think it is clear that we have this right. I am very sorry indeed to see the convention go behind the old laws of the territory. I think it would be shameful for this constitution to call upon a man to vote for its adoption and then disfranchise him after he had voted for it.

Mr. Marshall, of Missoula: I want to say that my understanding has been that the clause referred to by the gentleman from Silver Bow has always been construed not to apply to the right of suffrage or political rights—the right to hold office—but all fundamental rights of property and person. Why, under the old state of things, in some of the States negroes had a right to vote, but in the South we know they were never allowed to vote, and I think that question has always been understood and decided by the courts not to include political rights, rights to vote or rights to hold office or things of that kind, but personal security rights, and rights of property. Rights to hold property and dispose of property and rights of that kind are included in the provision of the constitution of the United States referred to by the gentleman from Silver Bow; but political rights have always been held not to be included.

Mr. Robinson of Deer Lodge: Irrespective of propositions of that character I do not see any objection to making this whole thing harmonious, as if by a vote of a majority of this convention we have decided as to qualifications of voters, that they must be citizens of the United States. Now, if that is the correct and proper rule, I do not see why we should make an exception to that and make those who have heretofore been declared by the laws of Montana Territory voters, to-wit, those who have only declared their intentions to become citizens, I do not see any reason for making an exception to that class of men. If it is the policy of the State to allow only citizens of the United States to vote, I do not see why we should not carry that principle clear through. It is no legal right conferred on those who have declared their intention only to become citizens of the United States, to vote; it is no vested right that they have, because we have allowed them to vote at Territorial elections, it is no vested right that they have—no right that they have, that we cannot take away from them and change under the State Laws of Montana. Then, if it is the policy of this State to allow only citizens of the United States to vote rather than those who have declared their intention to become citizens, I do not see why we should not make that thing consistent all the way through, because the territorial laws have in my judgment wrongfully allowed those who have declared their intentions to become citizens to vote. Unless they have a vested legal right in that matter, which cannot be claimed by any lawyer, and I do not believe that they have, I do not see why we should not make that thing harmonious, even so far as those who have enjoyed the right to vote under territorial laws—those who have declared their intentions to become citizens. So I am in favor of that proposition. I want to vote on this proposition separately from the other.

Mr. Goddard of Yellowstone: I am opposed to that portion of the amendment under consideration for the reason that it destroys the effect of the first provision of the amendment offered by the gentleman from Gallatin, which is that all persons shall be citizens of the United States before they shall be entitled to vote. Now, the object of that provision in the constitution is for the purpose of shutting out these foreign people who emigrate to this country and have not sufficiently educated themselves upon the institutions of our country to vote an intelligent ballot. That is the very object of the first part of this amendment. Now then, sir, there are hundreds, and I may say thousands of persons residing within the territory of Montana who have declared their intention to become citizens, who, I believe, will never become citizens of the United States; and under that latter provision they would be entitled to vote at every election; and it seems to me that that element is just as dangerous as the element which would come here hereafter. If there is any reason for the first part of this proposition requiring that every person should be a citizen of the United States, it should apply to those people who live in this territory at the present time and have declared their intentions to become citizens of the United States, as well as those who are to come hereafter. For that reason I am opposed to the second subdivision of the amendment of the gentleman from Gallatin County, inasmuch as it destroys the effect of the first part of the section.

Mr. Rickards of Silver Bow: I would like to ask the gentleman, can we disfranchise those who are already voters?

Mr Goddard of Yellowstone: I believe we can, and in connection with that I would say that the Organic Act under which the territory of Montana is created has fixed the qualifications of voters. We have met here to form a constitution by which we shall be governed hereafter, and I believe it is within the province and the scope of the authority of this convention to define what the political rights of citizens shall be—to define what their qualifications shall be as voters and I believe that this convention has the right to say that a person shall be a full citizen of the United States before he shall be allowed the right of franchise, just as much as they have to say that he shall have the same rights and privileges that he now enjoys under the territorial laws.

Mr. Whitehill of Deer Lodge: In answer to the constitutional question raised by Mr. Stapleton, I desire to read from Mr. McCrary on Elections, "Sec. 3. The right of suffrage is not a natural right, nor is it an absolute, unqualified personal right. It is a right derived in this country from constitutions and statutes. It is, as we have seen, regulated by the States, and their power to fix the qualifications of voters is limited only by the provisions of the fifteenth amendment to the constitution, which forbids any distinction on account of "race, color or previous condition of servitude", and by the general power of the Federal government to regulate its own elections" Huber vs. Riley, 53 Penn. State, 112, and some other cases.

Now, each State has the right to fix the qualifications of its voters, and there is no limitation except the fifteenth amendment of the constitution which forbids any distinction on account of race, color or previous condition of servitude.

Mr. Hartman, of Gallatin: I think it would be a very unfortunate step for this convention to take, to disfranchise the voters who have been voters in the territory under territorial laws. In the first place it would be an act of injustice to them, for this reason; all persons who have come here and taken out their naturalization papers have come here with the presumed knowledge that they would be entitled to vote upon their filing their declaration of intention to become citizens. But, leaving out the question of the injustice of depriving them of the right which they have heretofore enjoyed, I believe it would be an act which would imperil the very adoption of this constitution itself, for every one of these men will be empowered to vote on the adoption or rejection of this constitution, and State officers of the State election, and do you suppose they are going to the polls and cast their vote in favor of a constitution which disfranchises them. If so, you are reckoning without your host, and I pretend to say that if we fail to pass this proviso clause, that the constitution itself will stand a fair show of being rejected.

Mr. Maginnis of Lewis & Clarke: I undertake to say that whether the constitution itself stands a fair show to be rejected if we do this thing, it ought to be rejected, and I would feel like taking the stump in this territory and advocating its rejection from one end of it to the other, if we should do an injustice of this kind. The men who came here and under our laws have been invested with the franchise—the men who will meet you when you go back home, and who will say "we voted to put you in that convention and now you ask us to vote for the adoption of this amendment which disfranchises us." It is right and proper to make a distinction. Why, we have a great example in the foundation and formation of the constitution of the United States. You all know that no person except a native born citizen is eligible to the office of the Presidency, but the fathers of the country, recognizing the right of those who were there at the time, who helped to fight the revolutionary war, and who helped to adopt the constitution, and who voted for its adoption placed this provision in it "No person except a natural born citizen or citizen of the United State at the time of the adoption of this constitution shall be eligible to the office of President". I am sure there is an example great enough and illustrious enough for all of us to follow it, without the charge of inconsistency being urged as it has been urged by my friend from Deer Lodge.

Mr. Clark, of Silver Bow. I understand the policy of all republican governments has been to extend and not to restrict the suffrage—extend it in proper cases and never take it away where it has been given; and I think our action should be prospective and not retrospective. Where suffrage has been extended to any class in this territory I think it should remain there so far as those people to whom it has been extended have the right to exercise it, but prospectively, so far as the qualifications of voters in the future are concerned, we have a perfect right to fix those qualifications, and to place such restrictions upon that right as we think should be proper. That seems to me to be the spirit of our institutions, and absolute justice as well

Mr. Stapleton, of Silver Bow: I merely submitted a legal proposition to this convention, and I put it on legal grounds. I did not say it was right to disfranchise these people, but you must see at once the condition we put ourselves in. Now, when it comes to voting upon this constitution there will be thousands of people in Montana Territory who never have been voters who never have been possessed of the right of voting at all. Those people you say can vote for all time; you say a man that has declared his intention, it makes no difference whether in Montana Territory or anywhere else, if he happens to step over the line into Montana Territory the day before, then it never becomes necessary for him to become a full-fledged citizen, it never becomes necessary for him to take out his final papers, but for all time he is a voter in Montana Territory. Now, Mr. Chairman, the man who is so unfortunate as not to come until the day after. and who has declared his intention, he is shut out from voting until the five years have expired and until he has become a full-fledged citizen Then you must see that it becomes a question of when a man came to the Territory. Here are two men living side by side; one of them goes to the polls and votes simply because he came into the Territory the day before the adoption of the constitution; the other was so unfortunate as to come into the Territory the day after. So the qualification is dependent upon when a man came to the Territory. Now, I believe that we must make our election laws, whatever they may be, uniform. Now, Mr. Chairman, if we have a right to say that a man who happens to be in Montana Territory at that day and who has declared his intention to become a citizen, shall vote, then we can go further and say we can except such and such states, and we can disfranchise for the time being the citizens of other States. We can say for instance that a man that has lived in the State of Illinois before he came here, can vote. We can pick out the different states and say that a citizen of that state can vote when he has declared his intention. Now my friend has read from McCrary on Elections. There is nothing in that that goes to contradict anything that I have said. We are making qualifications of citizenship that should be uniform. We make the qualification at the time the man happens to put his foot into Montana Territory. Now, Mr. Chairman, I like the spirit that is evinced by some of these gentlemen. They say this constitution should be rejected, and they go further and say that if a majority of this convention are in favor of this provision, that so far as they are concerned they will go outside and will spend their time and money and work against the adoption of this constitution. Now, Mr. Chairman, if that is the spirit—(Interrupted).

Mr. Maginnis of Lewis & Clarke: I said I would feel like doing it.

Mr. Stapleton of Silver Bow: Well, I am very glad I misunderstood the gentleman and I apologize to him; because if that is the spirit, and because if men cannot have this constitution to suit themselves, they are going on the outside to work against its adoption, then it appears to me we had better quit, because then we would not be fit to enjoy the rights and privileges of statehood. Now there are a class of citizens who have taken out their first papers as they are called, but who have never taken out their second papers; but if you pass this law you force them either not to vote or to become full-fledged citizens and to take out their papers. There are thousands of the people in the Territory today that are doing that very thing, and every term of court they are called on to serve on jury duty and they laugh about it and say that they are not going to take out their papers for the reason that they don't want to assume jury duty.

Mr. Ramsdell of Missoula: It seems to me that the argument that has been advanced by the gentleman who has just taken his seat would nullify the Chinese Exclusion Act. That was made dependent upon the mere accident of coming into this country on a certain day. Any Chinaman who did not come in on a certain day was excluded by the laws of this country, and I believe it will not be denied by any man in this convention that if the United States has the right to exclude any class or sect, they have the right by the same law or the same precedent to disfranchise anybody; for it is a truism that the greater includes the less, and according to the argument advanced here we would really nullify an act that has been incorporated in the Constitution of the United States. As regards the fairness of this act it seems to me that it cannot be classed in the category at all. We have been elected and sent to this constitutional convention by perhaps three or four thousand men whom by our acts in this convention we would disfranchise; in fact the whole history of constitutional conventions and conventions of a deliberate nature, have been not to disfranchise men that were in the country at the time of the passage of the act, but to grant them full and uniform rights with those people and those classes whose rights were unquestioned; and it seems to me as regards fairness and justice, the proposition is not to be considered.

Mr. Knowles of Silver Bow: There has been something said here in regard to those who have simply declared their intention to become citizens, that they will always remain so; that they will never become full citizens of the United States. The disposition in our time is to enact laws that will preclude foreigners from holding real estate in the United States. The class of people that are organized into laboring organizations are having their influence upon the legislative assemblies throughout the United States upon this question. They are demanding that none but citizens of the United States shall hold its real estate. I believe that this is the law in this Territory at this time. We will go into a State organization with that law upon our statute book. Now if any alien who has simply declared his intention to become a citizen of the United States expects to transmit his little home or his property or anything of that kind or his real estate to his heirs he has got to become a citizen, and that fact alone is going to force every man who is in the Territory at this time who has simply declared his intention to become a citizen, to become a full citizen of the United States; and I believe all of them will become full citizens of the United States. And these citizens who have remained here in the Territory, helped build up its institutions, paid the taxes of the country, supported our schools, and who by virtue of the Organic Act of the Territory and the laws of the Territory, have simply been entitled to exercise the privilege of suffrage, that is simply a privilege, not a right, and I believe that at this time they should not be denied this privilege. They came in here to vote upon the adoption or rejection of this constitution; they are part of the people. When we put into this Constitution of Montana Territory, "We the people of Montana Territory adopt this constitution," why they are a part of this people, and then the very minute they come in here to adopt the fundamental law, to exercise a greater right than the right of electing officers after the adoption of that law, why, shall we disfranchise them? Shall we say that they are not entitled to vote after that? I hope that this amendment will prevail. I hope it will be put into a little better language than it is so as not to show an apparent verbal conflict, but it ought to be, in substance, adopted.

Mr. Hogan of Silver Bow: I differ somewhat from the arguments that have been adduced here in favor of the amendment, for several reasons. One reason is, the argument advanced yesterday on the proposition that every person should be a citizen of the United States. Some of the men who advanced that proposition yesterday argued today in favor of the proposition of creating a class here who are not citizens and who can remain here and enjoy all the privileges that citizens do. They give those people every privilege that a citizen has, and yet those people are excused from jury duty, they are excused from military duty, and from every duty of a citizen of the State. Is there anything to compel a man to become a citizen if it is only necessary for him to take out his first papers in order to exercise and enjoy all the rights of a citizen with the exception of transferring real estate. Now there are quite a number of this element in Montana who have no real estate and probably never will have. These people have no object in becoming citizens at all, therefore I think we should treat everybody alike. Those that are here the same as those that shall come. For that reason I certainly oppose the amendment.

The question was called for.

The Chairman: The question is, to strike out the second subdivision of this section.

Mr. Burleigh of Custer: I have listened to the arguments pro and con upon this proposition, and I must confess that some of the features of the amendment or substitute offered by the gentleman from Gallatin County I like and some I do not like. But here is a proposition that I do like, and as there may be someone here who has not read it recently, I will call the attention of the convention to it, and then make a few remarks, and then sit down. It will be found in the compiled laws of the Territory on page 923, Section 1007 "All male citizens of the United States above the age of twenty-one years, and all male persons of the same age, who shall have declared their intention of becoming citizens, and who under existing laws of the United States may ultimately become citizens thereof, shall be deemed electors of this Territory and be entitled to vote for delegate to congress, and for territorial, district, county, precinct and municipal officers provided they shall have resided in the Territory six months and in the county where they may offer to vote thirty days next preceding the day of election." Now, sir, I believe that that is a wise provision. I believe it is a just provision; and I believe it is a provision that might safely be transmitted from our territorial state of existence into that of a State. To require men to become full-fledged citizens before they can exercise the right of suffrage here provided they were not here at the adoption of this constitution, is going a little further than I am willing to go in fairness and in all justice in dealing with my fellow men. For instance you take a man in Massachusetts who came from England; he has been there perhaps six months; he sees an account of the wonderful natural deposits of gold, silver, lead and copper in Montana; he may have been there a year; he has taken out his first papers; he comes to this country and discovers that here is a place for him to invest his millions in developing the rich minerals of this country. Supposing he should come out here and invest considerable in property here, and he finally comes across this clause in the constitution which says that inasmuch as you have not been here five years and taken out your papers, you shall not have any voice or vote in the manner in which your property shall be disposed of here or shall be taxed. Now I say that is not fair. It is not dealing justly with these men for the reason that we have just extended to them an invitation to come out here. They look at the laws of Montana as they are today and say "we have all the privileges we want under existing election laws". When they get here they are met with a different proposition; and we say to them "Why, we have changed our laws since then and you cannot exercise the rights of a citizen". It looks a good deal like the invitation of the spider to the fly to walk into its little parlor and get entrapped. I do not believe there is any danger to the free institutions of this country by allowing them to come in here and settle down and become citizens immediately. Most men are not inclined to violate the law, but to keep it; most men are not inclined to tear down the fabric of free government, but to maintain it. That has always been the sentiment and that feeling seems to be "growing with our growth and strengthening with our strength." While as I said before, I like some of the provisions of my friend's substitute, I am opposed to the whole of it if it is all classed together. If it can be separated and disintegrated, then I will vote for some part of it and against the rest. But it does seem to me that the statute that I have just read must commend itself to every man that is not a candidate. I wont vote for a proposition here that undertakes to ostracise men who come to this country in good faith although they may have settled in Pennsylvania or South Carolina or Texas, and take a snap judgment on them. I do not believe in the doctrine. It is not the system under which this country has grown up from a few colonies to a population of sixty millions of people who can now boast of a government that would dwarf a dozen empires like that of Macedonia, which sent out its conquerors to the world with a great deal of intelligence. I believe in that system which has caused us to grow and prosper as no people ever prospered before, and I tell you we want to make haste slowly in these forward, imaginary steps of reform where we run against the rights of the people who are to come here and help us maintain the integrity of our Union, populate it, develop it and make it a mighty empire.

Mr. Clark of Silver Bow sent up an amendment which the Clerk read as follows: Amendment to the amendment offered by the gentleman from Gallatin. "Provided that every person who has declared his intention to become a citizen of the United States, in order to enjoy the right of suffrage, shall perfect his citizenship in five years from the date of the adoption of this constitution".

Mr. Hartman of Gallatin: I will accept the amendment, Mr. Chairman.

Mr. Clark of Silver Bow: My object in offering the amendment is that I am opposed to disfranchising anybody, if it can be avoided, who has had the right of suffrage in this Territory, and to whom as the gentleman has well said the members of this convention probably owe their seats. I still adhere to the original proposition that every man who shall be entitled to the right of suffrage in the State of Montana should live here five years before he is entitled to vote; but it does seem to work a hardship upon the people who are enjoying that privilege here now. I will admit that many of them are not entitled by moral considerations to the right of suffrage. We cannot take any cognizance of that qualification, and in order to avoid this seeming difficulty, I think by restricting the right of suffrage to these people who are now enjoying it, to the limit of the time in which they may acquire citizenship, it will only be doing them an act of justice.

The Clerk reread the substitute of the gentleman from Silver Bow (Mr. Clark) for the information of the convention.

Mr. Knowles, of Silver Bow: That would disfranchise for the five years.

Mr. Hartman, of Gallatin: If the gentleman will reduce that to proper form I will accept the amendment.

Mr. Bickford, of Missoula: I move that the committee do now rise, report progress and ask leave to sit again.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

Mr. Clark, of Silver Bow: Mr. Chairman, the gentleman from Lewis & Clarke (Mr Carpenter) I believe has written an amendment which probably is better than mine.

The Clerk read the amendment of the gentleman from Lewis & Clarke (Mr. Carpenter) as follows: "Provided that after the expiration of five years from the time of the adoption of this constitution no person except citizens shall have the right to vote."

Mr. Clark, of Silver Bow: I move the adoption of this amendment offered by the gentleman from Lewis & Clarke.

The Chairman: *The motion that the committee rise was carried.*

Mr. Clark, of Silver Bow: I beg pardon; I did not know that the Chair had put the proposition.

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

Mr. Cooper, of Gallatin: Mr. Chairman, the Committee of the Whole have under consideration General File No. 12 and have made some progress and ask leave to sit again.

The President: The Chairman of the Committee of the Whole reports that the committee have had under consideration Proposition No. 12, have made some progress and ask leave to sit again. If there be no objection leave will be granted.

Mr. Eaton, of Park: I move we take a recess until two o'clock.

The motion was seconded.

Mr. Bickford, of Missoula: I move to amend by making it three o'clock.

The motion was seconded.

The Chair put the question on the said amendment of the gentleman from Missoula (Mr. Bickford) and a vote being taken the same was declared carried.

The convention took a recess until three o'clock.

Friday, July 26th, 1889. Afternoon Session.

The convention was called to order by the President at three o'clock.

The Clerk called the roll.

Mr. Eaton, of Park: I would like to be excused from sometime this afternoon until Tuesday afternoon at four o'clock.

Mr. Reek, of Deer Lodge. I would like to be excused until Monday noon.

Mr Conrad, of Choteau: I beg to be excused after this afternoon until Monday at four o'clock P M.

Mr. Marshall, of Missoula. I ask leave of absence until Tuesday at two o'clock.

Mr. Brazleton, of Jefferson I ask leave of absence until Tuesday at two o'clock

Mr Burleigh, of Custer. I move that the convention be excused.

Mr. Robinson, of Deer Lodge: I ask leave of absence from today after the adjournment until two o'clock Monday

Mr. Browne, of Choteau: I would like to be excused until four o'clock Monday.

Mr. Conrad, of Choteau: I would say, Mr President, that all the gentlemen living on the Montana Central and also those living on the Northern Pacific wish to go home and cannot get here until four o'clock on Monday; and I would suggest that when the convention adjourn it adjourn until four o'clock instead of two.

The President: The gentleman from Beaverhead County, Mr. Knippenberg, desires me to state that he wishes leave of absence for the present.

Mr. Joy, of Park. I desire to be excused until three o'clock on Monday

Mr. Marrion, of Missoula: I would like to be excused from today until Tuesday at two o'clock.

Mr. Warren, of Silver Bow: I move that when we adjourn we adjourn until four o'clock on Monday

The motion was seconded.

Mr. Burleigh, of Custer: I move that when we adjourn we adjourn until nine o'clock tomorrow morning.

The President: There is a motion before the convention that when the convention adjourn it adjourn until four o'clock on Monday. An amendment to that is moved that when we adjourn we adjourn until nine o'clock tomorrow morning.

The Chair put the question on the amendment of the gentleman from Custer (Mr. Burleigh) and a division being called for the same was declared lost by a vote of twenty-seven in the affirmative to twenty-seven in the negative.

The President. The convention will not vote upon the original motion.

Mr. Burleigh, of Custer: Mr President, I move that the convention do now adjourn.

The motion was seconded.

The Chair put the said motion and a vote being taken the same was declared lost.

The President: The question is now on the original motion of the gentleman from Silver Bow (Mr. Warren).

Mr. Burleigh, of Custer: I call for the ayes and nays.

The President: The ayes and nays will be entered on the journal.

Mr. Rickards, of Silver Bow: Would an amendment be in order at this time?

The President: Yes sir.

Mr. Rickards, of Silver Bow: I move that when we adjourn we adjourn to meet at ten o'clock tomorrow morning.

The President: The motion is not in order.

Mr. Rickards, of Silver Bow: I move that when the convention adjourn it adjourn to meet at 9:30 tomorrow morning.

The motion was seconded.

The Chair put the said question on the motion of the gentleman from Silver Bow (Mr. Rickards) and a vote being taken the same was declared carried.

Mr. Warren, of Silver Bow: I rise to a point of order. Have not the ayes and nays been called for on the original motion?

The President: The gentleman rises to the point of order that the ayes and nays being called for on the original proposition, the amendment was not in order. That would be true if the roll had been begun, but the Clerk had not commenced to call the roll.

Mr. J. K. Toole, of Lewis & Clarke: Mr. President, I move that the convention now resolve itself into Committee of the Whole for the consideration of Proposition No. 14.

The motion was seconded.

The President: The Chair would like to make a statement. It has been the express desire of quite a number of the gentlemen of this convention that they secure a photograph in group of the members of this convention, and an invitation was given by some photographer in the Pittsburg Block to take the photographs of the members of this convention free if they would give him a sitting. My attention has been called to it, and I have been requested to ask the members of the convention to go there and have their photographs taken.

Mr. Collins, of Cascade: I desire an excuse for my colleague, Mr. Gibson, until Monday at four o'clock.

The President: If there be no objection the gentleman will be excused

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. J. K. Toole), a vote being taken the same was declared carried, and the convention resolved itself into a Committee of the Whole for the consideration of general orders.

The President called Mr. Cooper of Gallatin to the chair.

IN COMMITTEE OF THE WHOLE.

Mr. Cooper of Gallatin in the chair.

The committee was called to order.

The Chairman: When the committee rose it had under consideration the second subdivision of the resolution offered by the gentleman from Gallatin, which is a substitute to the substitute offered by the gentleman from Missoula. The Clerk will read the substitute.

The Clerk read the subdivision of Mr. Hartman's substitute to Section 2. Provided second that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution.

The Clerk then read the amendment of the gentleman from Silver Bow (Mr. Clark) to the said substitute as follows: "Provided that after the expiration of five years from the time of the adoption of this constitution no persons except citizens shall have the right to vote."

Mr. Hartman, of Gallatin: Mr. Chairman, that amendment is accepted.

The Chair then put the question on the amendment of the gentleman from Gallatin (Mr. Hartman) and a division being called for the same was declared carried by a vote of forty-three in the affirmative to eight in the negative.

The Chairman: The question now is upon the adoption of the clause as amended.

Mr. Clark, of Silver Bow: I move its adoption.

The motion was seconded.

Mr. Durfee of Deer Lodge called for the reading of the clause as amended.

The Clerk read same.

Mr. Hartman, of Gallatin: Before that is put I desire to say that I did not understand that Mr. Clark's amendment was in the nature of a substitute.

The Clerk read the clause as amended as follows: Provided second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution. Provided third that after the expiration of five years from the time of the adoption of this constitution no persons except citizens of the United States shall have the right to vote.

Mr. Clark, of Silver Bow: It seems to me that the language is a little conflicting.

Mr. J. K. Toole, of Lewis & Clarke: I would like to inquire of the gentleman from Deer Lodge if that amendment does not in turn give to any person who is not a citizen of the United States or who has declared his intention to become such a right to vote under the laws of the state for the period of five years.

Mr. Maginnis, of Lewis & Clarke: It undoubtedly does.

M J. K. Toole, of Lewis & Clarke: Mr. Chairman, I would like to offer the following. I offer it as a substitute.

The Chairman: The gentleman from Lewis & Clarke offers a substitute which the Clerk will read. Is this a substitute for the entire proposition as submitted by Mr. Hartman and amended by Mr. Clark—in other words, for the whole section?

Mr. J. K. Toole, of Lewis & Clarke: Yes sir.

The Clerk read as follows: Substitute for section 2 as amended by the amendments of the gentleman from Gallatin (Mr. Hartman) and the gentleman from Silver Bow (Mr. Clark). "Every male citizen of the United States above the age of twenty-one years and every male citizen of the same age who has declared his intention of becoming a citizen, and who under existing laws of the United States may ultimately become a citizen, and who for one year immediately preceding the election at which he offers to vote has resided in the state, and who has resided in the county, city, town or precinct such time as may be prescribed by law, shall be deemed an elector of this state and entitled to vote at the first general election after the admission of this state into the Union, and thereafter full citizenship of the United States, in addition to the qualifications above provided shall be necessary to constitute such elector. Provided that no person convicted of a felony shall be denied the right to vote if he has been pardoned therefor."

Mr. Burleigh, of Custer: I move the adoption of the substitute.

Mr. Maginnis, of Lewis & Clarke: I wish to ask if there is not an amendment pending—the amendment of the gentleman from Missoula, Mr. Marrion?

The Chairman: The Chair understands that the gentleman from Missoula offered a substitute. The gentleman from Gallatin (Mr. Hartman) offered a substitute for the substitute Then that question was divided. We are now adopting the second subdivision.

Mr. Maginnis, of Lewis & Clarke: I thought we had adopted that. Mr. Marrion's motion is now in order.

The Chairman: Not until the second subdivision is disposed of.

Mr. Maginnis, of Lewis & Clarke: I thought the Chair had decided that was adopted and then Mr. Toole offered this substitute.

The Chairman: The amendment of the gentleman from Lewis & Clarke was adopted, but we have not taken a vote upon the original question as amended.

Mr. J. K. Toole, of Lewis & Clarke: Under the Enabling Act for the foundation of the state of Montana all persons who are qualified electors under the laws of the Territory at this time become qualified electors for the purpose of voting on this constitution. This amendment proposes that all persons who are qualified electors of the Territory now, even those who are citizens and those who have declared their intention to become such, shall be qualified to vote at the first general election held after the admission of the state into the Union, which will be on the first Tuesday after the first Monday in November, eighteen hundred and ninety-one. Thereafter in order to vote it shall be necessary that the party be a full citizen of the United States and possessing the same qualification, one year's residence in the state. The next general election after that would be in November, eighteen hundred and ninety-two, which would give from this time until that time for those persons who are qualified, to become citizens of the United States. It occurs to me that there is no other method by which we can make this general in its application so far as full citizenship is concerned without violating some principle of the constitution. I want to see the men who are entitled to vote upon this constitution and who have been voting in this Territory for years—I want to see them secured the right to vote under general elections by the laws of the state; but I cannot see very well how you can divide it up without requiring full citizenship of the people who have been here all these years and at the same time requiring full citizenship on the part of those who are not residents of the Territory at this time. My inclinations are that way, and I am very much like a gentleman who introduced a bill in Congress and succeeded in getting it passed by that Congress. The President sent for him and told him it was unconstitutional. He told the President he had as much respect for the constitution as anybody else, but he did not allow it to stand between himself and his friends. I feel very much like that in this matter. It may be some hardship to some person who has not resided here a sufficient length of time to vote at the second general election, but I think it would probably take in four-fifths of those people.

Mr. Eaton of Park called for the reading of the section as amended for which Mr. J. K. Toole's substitute was proposed as a substitute.

Mr. Burleigh of Custer called for the reading of the substitute of Mr. J. K. Toole of Lewis & Clarke.

The Clerk read the section and the substitute.

Mr Warren, of Silver Bow: Mr. President, it strikes me that we have voted on this first clause about often enough. We have decided here about half a dozen times that nobody should be a voter except those persons residing in the Territory. As I understand the gentleman offers this as a substitute for the entire proposition. We voted on this proposition half a dozen times and we have adopted it twice. It is about time we knew where we were.

Mr. Hartman, of Gallatin: There was a suggestion made here that by the adoption of the proviso of Mr. Clark that we admit every person who during these five years comes in to vote just as soon as they declare their intention Now, I cannot see the force of that at all in construing the different provisos of the section together. There is no better rule of construction than that all the terms of it should be taken together. Now, then, "He shall be a citizen of the United States" is the first clause of it. That taken in connection with the proviso that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution is the only limitation placed upon the separate provision that he must be a full citizen. The second clause says that after five years those persons who have declared their intention to become citizens must be full citizens. I do not see the force of the gentleman's remark, that this admits any person during the five years except those persons who are voters at the time of the adoption of the constitution of Montana, and then if they complete their full citizenship within the five years they are full citizens and entitled to vote under the clause. But how it admits anybody else after he comes in here I do not see. It must be all construed together, in order to give effect to it at all.

The Chairman: I would like to ask the gentleman from Lewis & Clarke if his substitute is intended to be a substitute for the entire. If so, his substitute is then not in order.

Mr. J. K. Toole, of Lewis & Clarke: Very well, let it be withdrawn.

Mr. Carpenter, of Lewis & Clarke: In prescribing the qualifications of voters I think either part of this second subdivision ought to be stricken out; that the part affecting convicts ought to be stricken out or else the part affecting idiots and insane persons ought to be stricken out Either both ought to be in or both out.

Mr. Robinson, of Deer Lodge: That does not seem to me to express, if I understand it, correctly the views that I entertain upon this proposition, which, if I understand it correctly, are embodied in the substitute offered by the gentleman from Lewis & Clarke County, Mr. J K. Toole. My idea of this thing is about this, that a person exercising the elective franchise should be a citizen of the United States. It should stop right there but for the fact that many delegates have urged the proposition that it would be unfair to disfranchise those who have declared their intention of becoming citizens, so far as this coming election is concerned. Now, I have no objection so far as this coming election is concerned.

Mr. Maginnis, of Lewis & Clarke: The first general election is beyond the reach of this convention. The Enabling Act provides that every person now qualified shall be voters.

Mr. Robinson, of Deer Lodge: The gentleman, I think, is mistaken in that. Our Enabling Act reads as follows: "At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the constitution" etc. That says "qualified voters" of said proposed states. Now, then, we have it in our power to prescribe the qualifications of voters This amendment of the gentleman from Lewis & Clarke County provides that all persons who are now qualified voters shall vote at this first general election. That meets my views of the proposition,—that they shall be entitled to vote. Everyone who is a qualified voter under the present existing laws of the Territory of Montana should be entitled to vote at the first coming general election—at the October or November election whichever it may be.

Mr. J. K. Toole, of Lewis & Clarke: My amendment refers to the first general election after the admission of the state into the Union.

Mr. Robinson, of Deer Lodge: Then I would change it so as to allow those voters who are voters at the present time to vote at the election on the first day of October, or the first general election in November.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, that is entirely beyond the reach of this convention one way or the other.

Mr. Robinson, of Deer Lodge: We have the right, I claim, and it is not inhibited by this Enabling Act, to prescribe the qualifications of voters.

Mr. Maginnis, of Lewis & Clarke: This constitution has no effect until after its adoption.

Mr. Robinson, of Deer Lodge: (Reading) "The qualified voters of said states shall vote" Whatever qualifications we may prescribe for qualified voters would give them the right to vote or not to vote at any election. Then I say it would be unfair to those who have declared their intention to become citizens not to allow them to vote at any election this year. After that until the next general election ensuing, after this year, it gives those who wish to become citizens of the United States an opportunity to do so, and if they do not see fit to become citizens of the United States they should certainly not vote. I cannot see anything unfair in that proposition, and there is nothing illegal in it.

Mr. Mayger, of Lewis & Clarke: It seems to me from the reading of this amendment that we are providing here who shall be voters in this Territory for the next five years. After the expiration of five years we admit an amendment here that allows only citizens of the United States to vote regardless of whether they are citizens of Montana or not. I call the attention of the gentlemen of the convention to that fact, and I think the amendment requires another amendment to it.

Mr. Hartman, of Gallatin: I call the attention of the gentleman to subdivision two of that section, "he shall be a resident."

The Chairman: The question is upon the adoption of this substitute as amended.

The Chair put the question on the adoption of the subdivision as amended.

The Chair put the question on the adoption of the subdivision as amended and a division being called for the same was declared adopted by a vote of thirty-eight in the affirmative to nineteen in the negative.

Mr. J. K. Toole, of Lewis & Clarke: Mr. Chairman, I believe my substitute is now in order.

Mr. Maginnis, of Lewis & Clarke. What has become of the eubstitute of the gentleman from Missoula?

The Clerk read the substitute of the gentleman of Lewis & Clarke (Mr. J. K. Toole).

Mr. J. K. Toole, of Lewis & Clarke: I move the adoption of the substitute.

The motion was seconded.

The Chairman: The gentleman from Yellowston offers a substitute for the motion.

Mr. Clark, of Silver Bow: The only objection I have to this substitute for this section is that after one year, or at the next general election after the adoption of this constitution, citizens of this Territory who are now enjoying the elective franchise will be disfranchised. Now, I cannot see any particular reason why they should be allowed to vote at one election and then have the franchise taken away from them. If this motion prevails that will be the result of it. As I understand it they will be allowed to vote at one election and then thereafter will be disfranchised. Now, the particular objection, if I understand the sentiment of this committee, is that those people who are now enjoying the right of suffrage in Montana should not be disfranchised at all. I think that there are very considerable reasons why men who are now enjoying the right of franchise should not have it taken away from them. I understand from the remarks of the gentleman from Deer Lodge that he may have a misconception of the naturalization laws, although he ought to be better informed on the subject than I am. He argues that if a man does not complete his citizenship, we shut him out. Now, as I have said, a man who has declared his intention of becoming a citizen of the United States two or three years ago may not be able to complete that citizenship; but by running along two or three years he will be able to do so; and certainly at the end of five years every man who now enjoys the right of suffrage in Montana Territory and would be allowed to vote in the formation of the state would have the privilege of completing that citizenship. Then, I say if he does not do it, why, shut him out; give him a chance up to five years and then don't let him vote any more. But under the adoption of the amendment which I offer to Mr. Hartman's amendment, which has been voted upon and adopted, it precludes no one after the adoption of this constitution from voting if he comes in and declares his intention of becoming a citizen, and that is what I want to get at.

Mr. Carpenter, of Lewis & Clarke: It seems to me that this amendment should not prevail, for the reason that the section as now amended expresses clearer the sentiment as expressed by this convention than the substitute offered. It requires that voters shall be citizens except those who have the right to vote now, and those who have now the right to vote who are aliens shall not be prevented from voting for five years, giving them ample time to become citizens, after that time none but citizens shall have the right to vote. It expresses in the clearest language, it seems to me, the sentiment that is expressed by the convention in the votes that have been given. I think this amendment might be improved, but it would probably be at the expense of some of these provisions which clearly express the sense of the convention.

Mr. J. K. Toole, of Lewis & Clarke: If I thought it meant that, I would support it, but I think it clearly means not only what the gentleman says, but it goes further and says that if a man shall come here in four years from this time and declare his intention of becoming a citizen of the United States that he would be entitled to vote. It does not apply only to those who are here now, but it goes further and authorizes any person who comes here within the period of five years and declares his intention of becoming a citizen of the United States to vote at any election. Now, I would like, with the consent of my second, to strike out the words "first general election" in that and insert "second general election." Wherever "first election" occurs insert "general election." That will give three years and about eight months, or nearly four years, in which to perfect citizenship.

Mr. Carpenter, of Lewis & Clarke: It seems to me that the honorable gentleman from Lewis & Clarke is entirely mistaken in the construction of this matter. It gives no person who is an alien and who has declared his intention to become a citizen a right to vote after the period of five years from the adoption of this constitution unless he is a voter at the time of its adoption. If he comes here after that time and is an alien he will not be a voter and cannot vote after five years. It seems to me that a reading of it will convince any member of this convention that it is perfectly clear and plain.

The Chairman: The question is upon the adoption of the substitute offered by the gentleman from Lewis & Clarke (Mr. J. K. Toole).

Mr. Burleigh, of Custer: Mr. Chairman, I believe there are twenty-six letters in the English alphabet and some sixty thousand words in the English language. Now, this is an important matter, and if there is any obscurity in the gentleman's method of expression here that can be removed by the use of those words and those letters, I would like to have it done. This is one of the most important matters so far as affects the present and the future of this state that can possibly come up. It is far-reaching in its results, and I do not think that we had better hurry a matter through here that is going to remain in obscurity. I hope the gentleman who offered the last substitute will, if there be any obscurity, remove it so that we may act understandingly and know just exactly what we are voting for. I am in favor of the sentiments he puts forth here. I do not believe in restricting it so much as some other gentlemen do, but whenever the proposition comes up I would like to have it so plain and unmistakable that we can adopt it.

The Chair put the question on the adoption of the substitute offered by the gentleman from Lewis & Clarke (Mr. J. K. Toole), and a vote being taken the same was declared lost.

Mr. Chessman, of Lewis & Clarke: I move the adoption of the section as amended.

The motion was seconded.

Mr. Maginnis, of Lewis & Clarke: I think that the amendment of the gentleman from Missoula to the section is still pending. We have not had a vote on it

Mr. Clark, of Silver Bow: I call for the reading of the amendment.

The Chairman: The substitute was adopted.

Mr. Maginnis, of Lewis & Clarke: It was never up for adoption. It was offered as a substitute to this section.

Mr. Bickford, of Missoula: I think the convention should have an opportunity to vote upon the amendment as presented by Mr. Marrion. I call for a vote on it.

Mr. Maginnis, of Lewis & Clarke: I move the adoption of the substitute offered by the gentleman from Missoula, Mr. Marrion.

The Clerk read the said substitute of the gentleman from Missoula.

Mr. Collins, of Cascade: I rise to a point of order. My point of order is this, that at the session of the committee yesterday and, as I understand it, at the session of the Committee of the Whole this forenoon, we decided that the qualification of an elector shall be first, that he shall be twenty-one years of age, and next he shall be a citizen, and then we decided an amendment as given in this fourth clause. Now, my point is this, that a motion to insert the word "may" will not be in order, nor a motion to insert "not less than nor more than twenty-one"; or a motion "that he shall become a naturalized citizen," simply because we have passed upon that already; and the only way by which it can be brought up again in this committee is by a reconsideration. I remember distinctly that Mr. Warren on yesterday made a motion that the qualification of an elector shall be that he is a citizen, and after a great deal of argument, that was passed. That was the view of the committee. Now, I claim that upon that same proposition again that we cannot vote except by a reconsideration. If you do vote upon this proposition over and over again there is no telling how long we will sit in committee upon this one section; there is no limit to the time. But when we agree upon a proposition and adopt it by a direct vote, certainly I do not think it is in good parliamentary order to have someone else get up and move that same motion in a different way unless the whole matter is reconsidered.

Mr. Maginnis, of Lewis & Clarke: I believe that it is the rule that after all means to change the text of the section are exhausted, that then a motion to substitute for the amended text is in order.

The Chairman: The Chair decides that the point of order is not well taken.

The Chair then put the question on the substitute offered by the gentleman from Missoula and a vote being taken the same was declared lost.

Mr. Carpenter, of Lewis &Clarke: I move to amend the section by adding after the words "persons convicted of a felony," "no idiot or insane person." I do this for the purpose of perfecting the section. If you put one in you should include the other; otherwise the section is not perfect.

Mr. Eaton, of Park: I would like to ask what is the object of the gentleman's motion? Is he going to disfranchise the members of this convention? (Laughter)

There being no second to the amendment of the gentleman from Lewis & Clarke (Mr. Carpenter), the Chair put the question on the adoption of the section as amended, and a vote being taken the same was declared carried.

The Clerk read section 3, Proposition No. 14, as follows: Section 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the state or of the United States, nor while engaged in the navigation of the waters of the state or of the United States, nor while a student at any institution of learning, nor while kept at any alms house or other asylum, at the public expense, nor while confined in any public prison.

There being no amendments to section 3, the Clerk read section 4, as follows: Section 4. Electors shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

There being no amendments to section 4 the Clerk read section 5, as follows: Section 5. No elector shall be obliged to perform military duty on the days of election except in times of war or public danger.

There being no amendments to section 5, the Clerk read section 6. Section 6. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state, in consequence of being stationed at any military or naval place within the same.

There being no amendment to section 6 the Clerk read section 7, as follows: Section 7. No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state at least two years next before his election or appointment.

There being no amendment to section 7, the Clerk read section 8, as follows: Section 8. No idiot or insane person shall be entitled to vote at any election in this state.

Mr. Hartman, of Gallatin: I desire to call attention to the fact that there is a discrepancy between section 7, the last word in the second line of the section, and the report of the Judiciary Committee as to the qualifications of candidates for District Judge. The Judiciary Committee's report provides that District Judges shall reside in the state at least one year. This is a general clause that all civil or military officers shall have resided in the state at least two years. I therefore think it is necessary to strike out, and I move to strike out "two" and insert "one."

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Gallatin (Mr. Hartman) and a vote being taken the same was declared carried.

There being no further amendments to section 8, the Clerk read section 9, as follows: Section 9. The Legislative Assembly shall have the power to pass laws excluding from the rights of suffrage persons convicted of infamous crimes.

Mr. Clark, of Silver Bow: I move to strike out the section.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Clark), and a vote being taken the same was declared carried.

Mr. Burleigh, of Custer: I desire to turn back to section 8 and insert so that it will read as follows, "No idiot or person adjudged to be insane." I make that as a motion.

The motion was seconded.

The Chair stated the motion.

Mr. Carpenter, of Lewis & Clarke: Mr. Chairman, I object to that for the reason that there are a great many insane persons kept in private houses whose friends will never let them go to an asylum.
it is supererogation.

Mr. Robinson, of Deer Lodge: I oppose the amendment for the reason that no person is insane in law until he is adjudged to be so. Consequently

Mr Burleigh, of Custer: I withdraw the amendment.

There being no further amendment to section 9, the Clerk read section 10, as follows: Section 10. The Legislative Assembly shall pass laws to secure the purity of elections and guard against abuses of the elective franchise.

Mr. Warren, of Silver Bow: I have an amendment to offer to the section.

SIMEON R BUFORD
LEOPOLD F SCHMIDT CHARLES S HARTMAN
WALTER M. BICKFORD
THOMAS JOYES WILLIAM MAYGER
HENRY R WHITEHILL

The Clerk read as follows: Insert after the word "pass" in line one as follows: "a registration and such other laws as may be necessary."

Mr. Hartman, of Gallatin: I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

Mr. Robinson, of Deer Lodge: I trust that the amendment will not prevail, because, if it does, as I understand it, it will fix upon the state of Montana forever the registration laws, whether future legislation shall deem it wise or not, after having tried the experiment. We are now preparing to try the experiment of the registration laws, and if this amendment is adopted, whether those laws prove to be salutary or not, it will fix them upon the state of Montana forever. Therefore, I am opposed to this amendment

Mr. Clark, of Silver Bow: I move to amend by striking out the word "shall" and inserting "may."

Mr. Robinson, of Deer Lodge. The Legislature would have the power now to do that. The courts have construed that word "may" to be mandatory.

Mr. Maginnis, of Lewis & Clarke: It seems to me that this amendment limits rather than increases the obligation of the Legislature under the section. The section says, "It shall pass laws to secure the purity of elections."

The Chairman: The question is upon the amendment to the amendment to strike out the word "shall" and insert "may".

The Chair put the question on the said amendment of the gentleman from Silver Bow (Mr. Clark) and a vote being taken the same was declared lost.

The Chairman: The question now is upon the amendment of the gentleman from Silver Bow (Mr. Warren).

Mr. Warren, of Silver Bow: In connection with this matter, I desire to say this, that the first election ever held under the laws of the Territory of Montana in which we will have a free ballot and a fair count will come off on the first day of October next. I see nothing in this amendment that any gentleman can take exception to It is something that nearly every state in the Union now has. That amendment simply says that the Legislature shall pass a registration and such other laws as may be necessary to secure the purity of elections. I feel so far as I am concerned that it is about time in the history of the state of Montana that we should vote our sentiments and have that vote counted.

Mr. Courtney, of Silver Bow: I really think that the people of this Territory are desirous of having honest and pure elections, but it does seem to me that the report of the committee is ample and that this amendment is unnecessary. While I believe in having a pure and honest ballot, I shall vote against this amendment.

Mr. J. K. Toole, of Lewis & Clarke: I trust that this amendment will be voted down. We have already adopted a provision, or there is one here, that the Legislature shall pass such laws as will secure the purity of the ballot I take it, sir, that it will be wrong to commit the state of Montana forever and irrevocably to any system of registration. It has been suggested by the gentleman who preceded me, that Montana for the first time in her history will have a free ballot and a fair count. I think, sir, that he reflects upon the good name and reputation of this Territory when he makes that declaration here, whether it be designed for political or other purposes. It is a reflection sir, which I am here and now in my seat ready to deny. It may be, sir, that in elections of this Territory, there has not been that purity of the ballot which the people of the Territory had a right to demand, but that it has been up to the standard and in keeping with the states of the Union nobody will deny. We have now, sir, a system provided of registration in this Territory which will be inaugurated, we hope, for the first time within a month or two from this date, and it is the first registration that will have occurred in the history of the Territory. It may or it may not prove a benefit to the people of the new state, and may or may not aid in securing that purity of the ballot which every good citizen wants to see. But that we shall say in this constitution that the people of the state shall enforce a registration system, is, in my opinion, wrong. It may be, sir, that after this election is over the people of this state will be satisfied with that system, or they may be utterly and completely disgusted with the entire proceedings.

I believe, sir, in the virtue and in the integrity of the people. Upon that principle, I believe government is and ought to be based; and although this convention so far as the integrity and the intelligence of its members is concerned compares favorably with any like body that has ever assembled in this Territory, I do not believe that it possesses the combined wisdom of the land. Let us leave something for the people of the state of Montana to do. As I suggested here the other day to a friend upon this floor, I was almost inclined to introduce here a provision into this constitution that instead of biennial sessions of the Legislative Assembly, that it should be provided by law that the constitutional convention should meet biennially for legislative purposes. It will answer the purpose just as well, if we propose to descend into every detail of legislation and anticipate for one hundred years, if it may be, what shall be necessary, not only to secure the purity of the ballot but all of the details of legislation necessary to run and secure the state government. I believe in lodging the power with the people of the state and putting in the constitution no provision except such as appears to be absolutely necessary, and such safeguards around the interests of the people as have been well established by years of experience and observation. Outside of that, sir, I would commit all other matters to the people. I am willing now as I have ever been to submit to the voice of the people of this territory, and as I will be, to the voice of the people of this new state whatever shall be necessary to secure life, liberty, the pursuit of happiness and the protection of property; and I think, sir, that we shall make a grave mistake if we insert the proposed amendment of the gentleman from Silver Bow into the constitution at this time. Let us have at least one trial of the registration system before we are committed unalterably to it.

Mr. Burleigh, of Custer: In voting upon this proposition I desire to suggest this for the consideration of the members who are familiar with the continental principle, as I am, and that is that all political power is inherent in the people; that when the people get together to create and form a constitution they delegate to the government just such power as they see fit and no more, and all power not delegated to the Federal government is reserved to the people. In the formation of the constitution of the United States "It was the states and the people respectively," but here it is reserved to the people; and when they have once delegated this power it is gone beyond their reach except by an amendment to the constitution by which it is regained, or by revolution. I recollect once having a conversation with Mr. Lincoln during the stormy days of the Republic when he spoke of this question of constitutional power, and he turned around to me, depressed in spirts as he seemed a great deal of the time, and said, "Doctor, the safest place to repose political power is with the people." I have never seen the time that the people were not willing to surrender it for the public weal, for the safety of the nation, or the protection of the people; and I am a little chary about sticking everything in here, because every act of ours in creating this constitution is a surrender of the sovereign power of the people. Now, I lay that down as a fundamental principle; but it has seemed to me sometimes while we were here, that instead of being here to perform the work of statesmen, we were here to perform some culinary art on the day before Thanksgiving, and that is to stuff everything we can into the turkey regardless of anything but satiating our desires and satisfying our appetites. Now, I agree with my friend from Lewis & Clark County who has just spoken, that the provision reported back here, in my judgment, is as far as the people ought to go. There may have been flaws; there may have been votes purchased and everything of that kind, but is it not safer to leave this power with the people and rely upon the good sense and the virtue of the people to correct these derelictions in the future. Why, if he represents the Democratic party in all of its grandeur, I am here as one of the humble members of the Republican party; yet I believe that the doctrine which is enunciated in that section of the report of the committee goes quite far enough. I want to leave that matter in the hands of the people. This registration law is an experiment, and I am afraid it is going to be a very expensive one; but if it guards the ballot box, preserves its purity and gives men a right to prescribe a government of their own in an honest and efficient manner, it is worth all it costs. I believe for the present it had better be left in the hands of the Legislature, which means to leave it in the hands of the people, and when the representatives of the people come up here to recognize the sovereign power of the people, if it is deemed desirable and just, it will be made a permanent law. I do not want a law here like that of the Medes and Persians, which shall be irrevocable. I want to leave something, yea, everything open to the exercise of the popular will excepting that which is absolutely necessary to establish a government here and run its machinery without any oscillation or danger of a falling or tottering semblance.

Mr. Whitehill, of Deer Lodge: I think it was very conclusively settled during the session of the last Legislature that the sentiment of the people of Montana was thoroughly in favor of registration laws. That was discussed thoroughly in the papers during the session of the last Legislature, and the registration law was finally passed in obedience to the demand of the people, regardless of politics. I have nothing to say against the mode of conducting elections in Montana. I believe they have been as fair as they are usually in states where there is no registration law, but I am in favor of registration laws because I believe under such laws we can have fair elections. This is sought to be put in the constitution for the reason that where the constitution is silent on the subject the Legislature cannot pass registration laws. Now, I desire to quote a case in Wisconsin where the courts have decided that where the constitution prescribed the qualifications of voters without requiring registration, a statute which adds an enactment that no person shall vote except in accordance with the provisions of the act, is invalid. Now, there is a decision of one of the highest courts of the state, deciding that unless a provision is in the constitution that the legislative enactment passed for that purpose is invalid, and for the purpose of settling this question and the dispute, we might as well face it right here. I think the unanimous consent almost of the voters of this state is that we should have a registration law, and unless we embody such a provision now in this constitution, I say that then we are forever shut off from passing a registration law.

Mr. J. K. Toole, of Lewis & Clarke: If that be the law—perhaps it is —I take the position that the gentleman does, that I do not desire to see a constitution passed here which will forever prohibit us from passing a registration law if the people of the new state shall deem it necessary for the protection of the ballot. I want to avoid that just as much as I want to avoid the proposition of passing it unalterably and for all time. Therefore, to meet the views of the gentlemen, I now move to amend the motion of the gentleman from Silver Bow by striking out the word "shall" and inserting the word "may."

The motion was seconded.

Mr. Burleigh, of Custer: I would like to move an amendment to that "the Legislature shall have the power" after the word "shall."

Mr. J. K. Toole, of Lewis & Clarke: The gentleman from Silver Bow, Mr. Clark, made that motion, and it was voted down.

Mr. Collins, of Cascade: I rise to a point of order If it has been voted down it cannot be renewed.

Mr. J. K. Toole, of Lewis & Clarke: I accept the amendment offered by the gentleman from Custer.

Mr. Collins, of Cascade: The law read by the gentleman from Deer Lodge does not apply in this case. We have got upon our statute books a registration law. In our schedule we will provide that all laws now in existence shall be laws under the state, so that if we had no registration law in existence in Montana today and there was nothing in our constitution which provided for registration then this law might be applicable. All the courts of this state might so rule; but as we have a registration law, certainly there is no necessity for putting anything else in the constitution in regard to it. The law will be in existence while Montana is a state unless repealed by the Legislature. So I do not see the necessity of this. If registration is in the interest of fair elections, if the people want it, it will remain on our statute books forever; if they do not want it, they should have the right of striking it out.

Mr. Knowles, of Silver Bow: I wish to say that the schedule will be that all laws in force in the Territory that are not in conflict with this constitution, and not all laws in force, will become a part of the laws of the state; because there are a great many which might conflict with the constitution: and hence it will only be such as do not conflict with the constitution. If the decision read by the gentleman from Deer Lodge should apply to the constitution that we adopt, then if that prohibits a registration law, why, this registration law will be repealed; that will be the effect of it. It is only a question as to whether that is in conflict with the laws or with the provisions of this constitution. Without that decision I would have thought that there could have been a law passed for the registration of voters notwithstanding this provision of the constitution. The courts may take that view, that having said that citizens and certain other parties who have declared their intention to become citizens were entitled to vote that they could not add an additional requirement, and that is that they should be registered. But I think that most states that have a registration law have just such provisions in their constitution as we have in ours. This Legislature will have general powers of legislation. It will not be like the Congress of the United States, which has only specific powers of legislation. There they are confined to legislate upon specific questions that are delegated to them as a legislative body; but the Legislative Assembly will have a right to legislate upon all rightful subjects of legislation except where limited by this constitution.

The Chairman: The question is upon the amendment of the gentleman from Custer (Mr. Burleigh).

The Chair put the question upon the said amendment of the gentleman from Custer (Mr. Burleigh), and a vote being taken the same was declared carried.

The Clerk read section 11 as follows: The Legislative Assembly may pass laws allowing women the right to hold any school district office and vote at any school district election.

Mr. Mayger of Lewis & Clarke sent up an amendment.

Mr. Collins of Cascade also sent up an amendment.

The Clerk read as follows: Amend section 11 by striking out the word "may" and inserting the word "shall" in line one. The Clerk also read as follows: Amend line two by striking out the word "district"—so that it will read: "The Legislative Assembly may pass laws allowing women the right to hold any school office and vote at any school election."

The Clerk also read as follows: Amend section 11 by adding after the word "district" wherever it occurs in line two, the words "or municipal" (offered by Mr. Collins).

The Chairman: The question is upon the motion of the gentleman from Cascade.

Mr. Collins, of Cascade: Women have had the right to vote in school elections for a number of years under the laws of the Territory. Women have also had the right to be candidates for a county office under the laws of this Territory. This constitutional enactment or section takes away part of the rights they have had before. Now, I believe that instead of taking away part of those rights we should add some to them. We have decided not to add fully to them; we have decided not to give the elective franchise to them, but certainly we should not decide to take the powers in this line that they have away from them. The municipal elections of Montana are held separate and distinct from the general elections. Great reforms in the municipal laws of the Territory are needed, and everyone who has given this matter any consideration or thought believes that by infusing new blood into these elections—by allowing the women to vote—those reforms will occur, and that if they have the right to vote it will be a blessing to the towns of Montana. Any school elections where women have voted, and where the votes of women have predominated, has been a reform in the right direction Every school district of Montana, be it in a town or in the country, where women have participated in the elections, have been benefited by their views and their votes. The great things to be reformed in our Territory and in every state in the Union are municipal ordinances, and I claim that as good citizens, the male inhabitants of Montana who have now the privilege of exercising the elective franchise should take one step—a small step in advance, and give women the right to exercise their influence for good in the government of our cities and villages. I hope that this will pass, not that we shall give them the right, but that we shall delegate it to the Legislature to give it to them.

Mr. Mayger, of Lewis & Clarke I believe I can endorse all the gentleman from Cascade has said in this matter. We heard a great many speeches here the other day. This amendment that I make here is to transfer into the hands of women the right to vote at an election for school office in the state of Montana. It does not only go as far as the county offices, but it takes in as well the office of State Superintendent of Public Instruction and that was what was intended to be covered by the amendment that I sent to the Clerk's desk. I think from the number of gentlemen that spoke upon woman suffrage the other day in regard to civil government, that some of them ought certainly to support this amendment.

Mr. Carpenter, of Lewis & Clarke: It seems to me that that amendment goes to this extent that the State Superintendent of Public Instruction is elected at the general election, and to vote for that officer would be to vote at the general election; and to allow them to vote at municipal elections and also at state elections would be to allow them to vote generally. It is the same question that was decided yesterday.

The Chair put the question on the amendment of the gentleman from Cascade and a division being called for, the same was declared lost by a vote of twenty-three in the affirmative to thirty-nine in the negative.

The Chairman: The question is now upon the amendment of the gentleman from Deer Lodge.

Mr. Watson, of Fergus: I ask for the reading of the amendment I sent up some time ago.

The Chairman: Your amendment has been out of order until this moment It is now in order.

The Clerk read as follows: Amend section 11 by inserting after the word "hold" in the first line the words "the office of the County Superintendent of Schools or."

Mr. Bickford, of Missoula I desire to advocate the amendment offered by the gentleman from Fergus, Mr. Watson, and I desire to advocate it upon the ground of public policy, and I believe that the experience of this Territory will bear me out in saying that where women have been elected to the office of County Superintendent of Public Schools that the system has been improved thereby. I know that in our own county a most estimable lady has occupied the position for one term. She fulfilled the duties of the office to the entire satisfaction of the voters of the county. I believe that the people of Lewis & Clarke County at the present time have placed the charge of their schools in the hands of a lady in whose integrity, in whose ability, and in whose efforts in behalf of the public schools they have the utmost confidence. I believe, sir, that in view of the fact that the experience of the past has shown us that the ladies are fully competent to take charge of this department of the public service that we should as members of this constitutional convention extend to them the same right that they now have under the laws of the Territory. It is only by a consideration of the events of the past that we are enabled to imbibe wisdom for our guidance in the future. Therefore, I say that if it has proved a satisfactory course in the past in this Territory, if we are satisfied with the laws as they now stand, this amendment should certainly prevail I hope that the members of the convention will take into consideration the fact that the ladies have fulfilled the duties to which they have been elected to the entire satisfaction of the people of this Territory.

Mr. Carpenter, of Lewis & Clarke: I am happy to put in one word for the amendment Women have been eligible to school district offices and to the office of County Superintendent of Schools, and I am opposed to taking away any of the rights that they have enjoyed. I am therefore in favor of the amendment.

The Chair put the question on the said amendment of the gentleman from Fergus, Mr Watson, and a vote being taken the same was declared carried.

Mr. Marshall of Missoula sent up an amendment which the Clerk read as follows: "That the first seven words of section 11 be stricken out and after the word "women" the words "shall have" be inserted, so that it shall read as follows: "Section 11. Women shall have the right to hold the office of County Superintendent of Schools or any school district office, and vote at any school district election."

The motion was seconded.

The Chair stated the motion.

Mr. Marshall of Missoula: My object, Mr. Chairman, is only that this convention shall declare that the women shall have the right, instead of saying that the Legislature shall have the power to pass laws giving them the right.

Mr. Carpenter, of Lewis & Clarke: I simply offered an amendment as to this language. If women have the right to hold these offices I do not see who else can hold them. I therefore move to amend "that women shall be eligible to the office of County Superintendent, of Public Instruction."

Mr. Marshall, of Missoula: I accept that amendment.

Mr. Robinson, of Deer Lodge: I have no objection so far as I am concerned to the proposition if it was in the Legislature, but the objection I have to it in the constitution is that it does not properly form a part of the constitution. The proper way is for the constitution to declare that the Legislature may prescribe the eligibility to the respective offices, and not for the constitution to declare who shall hold offices, and who shall not. It is intrenching upon the functions of the Legislature and I think it is proper for the convention to leave that all entirely to the Legislature.

Mr. Rickards, of Silver Bow: We have been doing that for two days.

Mr. Robinson, of Deer Lodge: It is trenching upon their powers, and therefore I think it should be left to the Legislature as in the original report of the committee, to declare who shall be eligible to the office. So far as the schedule is concerned it is proper enough for the Legislature the first time it can convene, where offices have not heretofore been created to make some declaration respecting that. It would come properly in the form of the schedule; but so far as the constitution proper is concerned I think it has no place there. It is a power which belongs to the Legislative Assembly and should not be in the constitution. That is the only objection I have to it. So far as the principle is concerned I agree with the gentlemen. I believe in the ladies holding these offices in regard to the public schools. I have seen the good results of that. We have quite a number of ladies Superintendents of Public Schools in the different counties, and I have seen nothing but good resudts coming from it. I am an advocate of it, and have no objections to it.

Mr. Rickards, of Silver Bow: "Oh, Consistency, thou art a jewel."

Mr. Marshall, of Missoula: I think for every single office that is spoken of in this constitution the qualifications are prescribed: The county attorney shall be over twenty-one years of age; a judge shall be of such an age, and reside in such a place; and it seems to me the especial object and purpose of a constitution is to declare not only who shall be electors but who shall be eligible to the different offices; and it does seem to me it is appropriate that the constitution should specify the qualifications for this office.

The Chair put the question on the motion of the gentleman from Missoula (Mr. Marshall) and a vote being taken the same was declared carried.

The Chairman: The Clerk will read the amendment of the gentleman from Lewis & Clarke, Mr. Mayger.

The Clerk read as follows: Amend section 11 by striking out the word "may" and inserting the word "shall" in line one.

Mr. Mayger, of Lewis & Clarke: I withdraw that motion. I would like to have the proposition last amended read so that we can understand it.

The Clerk read section 11 as amended.

Mr. Mayger, of Lewis & Clarke: Mr. Chairman, I would like to offer an amendment.

The Clerk read the amendment of the gentleman from Lewis & Clarke as follows: After the words "schools or" insert "or State Superintendent of Public Instruction."

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Mayger) and a vote being taken the same was declared lost.

Mr. Watson, of Fergus: I desire to say that I think there should be another amendment made in order to carry out the wishes of the convention evidenced by its votes. I desire to amend then by striking out the words "school district" as they are in the three last words of the section, and to insert after the word "election" the words "in reference to schools." As I understand it, you have made women eligible only to school district offices.

The motion was seconded.

The Chairman: Will the gentleman send up his amendment in writing, that we can get a record of it?

Mr. Maginnis, of Lewis & Clarke: I would call the attention of the committee to the fact that section 12 of this schedule is the same as section 3 of the proposition on Executive Departments, that is, it fixes the qualifications for the office of Governor, Lieutenant-Governor, etc., with the exception that the time required is two years instead of three. I notice the gentleman made the same sort of correction in regard to judges, on the former page. Now, I do not see the necessity of repeating the same sections in the constitution, in regard to the officers and having their qualifications enumerated twice. The same observation applies to the succeeding section.

The Chairman: A motion to strike out will be in order.

Mr. Robinson, of Deer Lodge: I move to strike out those two sections.

Mr. Bullard, of Jefferson: We did not know when we acted upon this subject that any other committee would take it up, and consequently we fulfilled only our duties.

The Chairman: The question is now upon the amendment of the gentleman from Fergus, which will be read.

The Cerk read as follows: Strike out the words "school district' where they last occur and add after the word "election" the words "in reference to schools."

Mr. Maginnis, of Lewis & Clarke: Would not an election of State Superintendent of Public Instruction be considered "in reference to schools," and would not that give them, as Gov. Carpenter said, a right to vote at any election?

Mr. Watson, of Fergus I see the point made by the gentleman from Lewis & Clarke, and I will amend my amendment so as to cover that part of it.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, I will move to strike out section 12, fixing the qualifications of executive officers.

The motion was seconded.

The Chair stated the motion.

Mr. Rickards, of Silver Bow: It seems to me that that would hardly be a proper form. It is scarcely treating the committee right I move to amend that when the committee rise to report back, recommending that sections 12, 13, 14 and 15 be filed on the general file for consideration with Proposition No. 4.

Mr. Maginnis, of Lewis & Clarke: I accept that amendment, so far as the proposition affecting these different departments is concerned.

Mr. Carpenter, of Lewis & Clarke: Mr. Chairman, is a motion in order in reference to these sections?

The Chairman: Yes sir.

Mr. Carpenter, of Lewis & Clarke: I would like to move to strike out the whole of these sections and substitute this which I offer.

The Chairman: The Clerk will read the substitute of the gentleman from Fergus, Mr. Watson.

The Clerk read as follows: Strike out the words "school district" where they last occur and add after "election" the words "in reference to state offices."

Mr. Craven, of Lewis & Clarke: It does occur to me that this amendment should pass. Now, the office of County Superintendent is voted for at the same time as the other county offices and it will necessitate an additional expense in the matter of ballots at least when we go to elect county officers if we let women vote for any particular office on the ticket and not for all. I see no good to be subserved by the franchise in that respect

The Chair put the question on the said motion of the gentleman from Fergus (Mr. Watson) and a vote being taken the same was declared lost.

Mr. Collins, of Cascade: The champions of section 11 have overlooked the fact that they must make a declaration before it can be of any force and effect, and I respectfully suggest that as we made a declaration the other day that a certain thing can be public property without any particular reason for it, in this manner we must make a declaration that woman is a person, before this section can have any validity. So I respectfully request that the gentlemen who are championing this particular question make a motion that a woman is a human being or person in the language of the court, and that she can fill the offices, etc. I respectfully suggest that some of those gentleman make that motion.

The Chairman: The Clerk will read the amendment of the gentleman from Lewis & Clarke (Mr. Carpenter) to section 12.

The Clerk read same.

Mr. Clarke, of Silver Bow: I move the adoption of section 11 as amended.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Clark) and a vote being taken the same was declared carried.

The Clerk read section 12.

Mr. Bullard, of Jefferson: In regard to these sections 12, 13, 14 and 15, it seems to me that the members of this committee on suffrage and qualifications to hold office are willing that these sections should be stricken out in order to save the time of the convention.

The Chairman: The Chair has a substitute for section 12.

Mr. Rickards, of Silver Bow: I rise to a point of order, and it is this, that I made a motion, which was duly seconded, that the subject matter contained in 12, 13, 14 and 15 be reported back by the committee when they rise with the recommendation that it be filed and considered with Proposition No. 10. I renew my motion.

Mr. Durfee, of Deer Lodge: I move to amend by adding sections 16 and 17.

The motion was seconded.

The Chairman: The gentleman from Lewis & Clarke offers a substitute which will be read by the Clerk.

The Clerk read as follows: Substitute for all qualifications of section 12 to 17 inclusive: "No person qualified to vote at general elections in this state shall be eligible to any office therein except as otherwise provided in this constitution, or subject to such additional qualifications as may be prescribed by the Legislative Assembly for city offices and offices hereafter created."

Mr. Carpenter, of Lewis & Clarke: I will state the reasons why I offer that. The reason why I favor the adoption of that substitute is this. First, as has been stated the provisions of these sections are all provided for in the reports of the several committees—the Committees on Executive Departments, Legislative Departments, Judicial Departments and County Officers. Now, this is the report of the Committee on Suffrage and qualifications to hold office. It is stated who may vote. There is not a qualification stated in this report as to who shall hold office. Everything stated is a disqualification. Now, that states affirmatively who may and who may not hold office subject to these other provisions; and subject to these provisions it provides the general provisions that a person entitled to vote is entitled to hold office. Now, in regard to all the Executive, Legislative, Judicial and County Officers, it is stated that the person is to be a citizen. Nobody is qualified except in a backhanded way; he is qualified by implication, because the constitution does not say he is disqualified. Now, it seems to me there ought to be a provision stating who shall hold office, and this does not make a voter eligible to office except where the Legislature may provide for city officers. There are certain propositions which are submitted in the report of a different committee. Taxpayers are sometimes permitted and authorized to vote on certain propositions. There is a certain qualification as to age Now, this also gives the Legislature, if new offices are created, the right to fix additional qualifications as to these new offces for the officers; for instance, a mining bureau. You would want some particular qualifications as to the person holding that office, and any other new office, where a qualification in addition to that of simply being a voter should seem to be required.

The Chair put the question on the substitute of the gentleman from Lewis & Clarke (Mr. Carpenter) and a vote being taken the same was declared carried.

Mr. Burleigh, of Custer: I move that we now rise.

Mr. Collins of Cascade: I have a section here that I would like to offer.

The Chairman: The Clerk will read same.

The Clerk read as follows: Section 13 offered by Collins of Cascade: "in all elections held by the people under this constitution the person or persons who shall receive the highest number of votes shall be declared elected."

Mr. Collins, of Cascade: I move the adoption of the section.

The motion was seconded.

The Chair stated the motion.

Mr. Knowles, of Silver Bow I would just add there the highest number of legal votes. (Laughter)

Mr. Collins, of Cascade: I accept that. There should be some provision in the constitution or the law, or some place, declaring the person who receives the highest number of votes elected.

The Chair put the question on the said motion of the gentleman from Cascade (Mr. Collins) and a vote being taken the same was declared carried.

Mr. Burleigh, of Custer· I will renew my motion

Mr. Eaton, of Park: If there is no motion before the committee I wish to move that the committee now rise and report back Proposition No. 14 as amended, with the recommendation to the convention that section 2 as amended be printed.

The motion was seconded.

Mr. Maginnis, of Lewis & Clarke: Why not have the whole proposition printed?

Mr. Eaton, of Park. I will accept that amendment.

Mr. Kennedy, of Missoula: I think it ought to be referred to the Committee on Engrossment first and have it properly engrossed. I move an amendment to that effect.

The Chairman: What is the pleasure of the Committee in reference to the motion that was before the house with regard to sections 12, 13, 14 and 15?

Mr. Rickards, of Silver Bow: I withdraw my motion.

The Chairman. The gentleman withdraws his motion. The gentleman from Lewis & Clarke amends the motion of the gentleman from Park.

Mr. Eaton, of Park: I accept the suggestion of the gentleman from Lewis & Clarke (Mr. Maginnis) if that is the question.

The Chairman: The gentleman from Missoula moves that the bill be referred to the Engrossing Committee.

Mr. Kennedy, of Missoula I move to amend the motion of the gentleman from Park, that it be referred to the Committee on Engrossment.

Mr. Eaton, of Park: You cannot engross anything with any propriety until it has been passed.

The Chairman: The question is on the amendment of the gentleman from Missoula.

Mr. Carpenter, of Lewis & Clarke: I hope this amendment will not prevail. I moved the other day that a bill be referred to the Printing Committee and from courtesy accepted the amendment from some gentleman near me that it go to the Engrossing Committee. The result was it delayed the matter a day, and afterwards the convention had to send it to the Printing Committee. I hope this will go direct to the Printing Committee

The Chair put the question on the amendment of the gentleman from Missoula and a vote being taken the same was declared lost.

The Chair then put the question on the motion of the gentleman from Park that the subject matter be reported back and printed, and a vote being taken the same was declared carried.

The Chairman: It has been moved and seconded that the committee do now rise, report progress and ask leave to sit again.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Burleigh) and a vote being taken the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

The Convention was called to order.

Mr. Cooper, of Gallatin: Mr. President, your Committee of the Whole have had under consideration General Orders No. 12 with the amendments. The committee asks time to perfect its report.

The President: The Chairman of the Committee of the Whole reports that they have had under consideration File No. 12, Proposition No. 14, and that it has been reported back with amendments, with instructions that it be printed. If there be no objection the report of the committee will be received and adopted.

Mr. Warren, of Silver Bow: I now move that the convention adjourn.

The motion was seconded.

The Chair stated the motion.

The President: The Chair desires to state that the time to which the convention adjourns is fixed for 9:30 tomorrow morning.

Mr. Middleton, of Custer: Before the motion is put I would like to be excused until Monday at four o'clock.

The President: The gentleman will be excused until Monday at four o'clock if there be no objection.

Mr. Hartman, of Gallatin: I would like to ask leave of absence until four o'clock, Monday afternoon.

The President: The gentleman from Gallatin asks to be excused until Monday afternoon. If there be no objection the request will be granted.

Mr. Collins, of Cascade: I would like to ask for information how many members of the convention there are who are not excused.

The Chairman: The Clerk will furnish the information to the gentleman if he desires it. The question now is upon the adjournment. The members will bear in mind it is to 9:30 to which we adjourn.

The Chair put the question on the said motion to adjourn and a vote being taken the same was declared carried.

The convention stood adjourned until Saturday, July 27th, 1889, at 9:30 A. M.

NINETEENTH DAY.

Saturday, July 27th; 1889. Morning Session.

The convention was called to order by the President at 9:30 A. M.

The Clerk called the roll.

The Chaplain offered prayer.

The Clerk read the journal of the previous day.

Mr. Hershfield of Lewis & Clarke sent up a report of the Committee on Miscellaneous Subjects.

The President: The Chair is in receipt of a report of the Committee on Miscellaneous Subjects.

Mr. Hershfeld, of Lewis & Clarke: I desire to say on behalf of the committee that Mr. Parberry of Meagher was not present to sign the report which he intends to do as soon as he returns. I presume he can have that privilege. He agreed to have the report signed and presented on his return. I presume it will be in order for him to sign it when he returns.

The President: The report may be ordered to be printed. Does the Chairman of the committee desire the report read?

Mr. Hershfield, of Lewis & Clarke: No sir; it is rather voluminous.

Mr. Cooper, of Gallatin: I would like to defer making the report of the Committee of the Whole until Monday. I did not have time to examine it thoroughly.

The President: If there be no objection the gentleman will be allowed to make his report on Monday.

Mr. J. R. Toole, of Deer Lodge: I move you that the convention resolves itself into Committee of the Whole for the purpose of considering Proposition No. 18, General File No. 17.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Deer Lodge (Mr. J. R. Toole) and a vote being taken the same was declared carried.

The President: The Chair will appoint Mr. Dixon of Silver Bow Chairman of the Committee of the Whole.

Mr. Dixon of Silver Bow begged to be excused.

The President then called Mr. Hershfield of Lewis & Clarke to the Chair.

IN COMMITTEE OF THE WHOLE

Mr Hershfield of Lewis & Clarke in the Chair.

The committee was called to order.

The Chairman: What is the pleasure of the committee on Proposition No. 18?

The Clerk will read section 1.

The Clerk read section 1 as follows: Article on state institutions and public buildings. Article ...., Section 1. Educational, reformatory and penal institutions, and those for the benefit of the insane, blind, deaf and mute, and such other institutions as the public good may require shall be established and supported by the state in such manner as may be prescribed by law.

Mr. Whitehill, of Deer Lodge: I have an amendment to offer.

The Clerk read the same as follows: Amend section 1, line two by inserting the words "soldier's home."

The motion was seconded.

The Chair put the question on said motion of the gentleman from Deer Lodge (Mr. Whitehill) and a vote being taken the same was declared carried.

Mr. Rickards, of Silver Bow: I move the adoption of section 1 as amended.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Rickards) and a vote being taken the same was declared carried.

There being no further amendments to section 1, the Clerk read section 2, as follows: Section 2. The Legislative Assembly shall have no power to change or locate the seat of government of the state, but shall at its third regular session, after the adoption of this constitution provide by law for submitting the question of the permanent location of the seat of government to the qualified electors of the state at the general election then next ensuing, and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said Legislative Assembly shall also provide that in case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the state at the next general election; Provided, That until the seat of government shall have been permanently located, as herein provided, the temporary location thereof shall be and remain at the city of

Mr. Warren, of Silver Bow: Mr. Chairman: I move to amend section two by filling in the blank the word "Anaconda."

The motion was seconded.

Mr. Burleigh, of Custer: I move to amend the suggestion of the gentleman by inserting the word "Billings."

Mr. Rickards, of Silver Bow: If there is an amendment in order I move to amend by inserting the words "Butte City."

Mr. Clark, of Silver Bow: I second the amendment.

Mr. Breen, of Jefferson: I move to amend by filling in the name of "Boulder".

Mr. Clark, of Silver Bow: The first motion was to fill the blank; that is not an amendment because it is an ellipsis that had to be filled. The first amendment offered was to insert the word "Billings" and then "Butte". So that there are only two amendments now pending, as I understand it.

The Chairman: The Chair would be under the impression that the first amendment put to the house would be to amend "Butte" by inserting "Boulder."

Mr. Warren, of Silver Bow: In order to get this thing into shape, I move you that that blank be filled by the word "Anaconda"

Mr. Browne, of Choteau: I offer an amendment that the words "City of Fort Benton" be inserted.

The motion was seconded.

The Chairman: The Chair is unable to see how the Chair is going to accept the amendment.

Mr. J. R. Toole, of Deer Lodge: I believe the only way would be to have a vote and then when that decision is reached to receive the amendment.

Mr. Marshall, of Missoula: Mr. Chairman, the first amendment offered was that the blank be filled by the word "Anaconda." If there was no other amendment offered that would be the question. Then the gentleman moves to amend that amendment by striking out Anaconda and insert Billings. That made two propositions pending the convention, and we hold that those are all that are properly before the convention until a vote is taken. It seems to me very clearly then according to the mode of procedure heretofore that the first question is to insert Billings in the place of Anaconda. Then the question would come up as to Butte and the other places, it seems to me. It certainly is a fair motion to say how a blank shall be filled. That is the first motion that was made here and it is in order. Then the first amendment was to insert Billings instead of Anaconda, and I understand the mode of procedure has been that there shall be but two propositions before the convention at the same time.

Mr. Clark, of Silver Bow: Mr. Chairman on this point of order I desire to say a word. The gentleman from Missoula takes the position that the filling of the blank by the insertion of the word Anaconda is in the form of an amendment; and that only two amendments can prevail, but I contend that the filling of the blank is not an amendment. Here is the report; they have left this word out. Now, that is in the form of a motion. The gentleman from Custer offers an amendment that the word Billings be substituted. That is the first amendment The gentleman from Silver Bow moves to amend the first amendment by inserting the word "Butte" and that is the question now before the committee upon the motion made by the gentleman from Silver Bow; to substitute "Butte" instead of "Billings."

Mr. Robinson, of Deer Lodge: I understand there is a positive rule of parliamentary law on this question of filling blanks, and while I am not dogmatical upon the proposition, I remember as stated by the President of this convention that when it comes to filling blanks one proposition after another is not an amendment but they stand upon separate and distinct propositions, and the vote must be taken in the order in which they are proposed. Hence, if I am correct about that, the first proposition would be the filling of the blank by the word "Anaconda."

Mr. Rickards, of Silver Bow: I rise to a point of order. My point of order is this, when a member rises to his feet and raises a point of order, is it debatable?

Mr. Collins, of Cascade: I move that this matter of filling the blank be free-for-all, and that the convention vote upon it by ballot, and keep on voting until the place receiving the majority of votes is voted upon, and that that place receiving the majority of votes shall fill the blank.

The motion was seconded.

Mr. Maginnis, of Lewis & Clarke: Now, I hope that we shall endeavor to go on with this constitution and not go into a matter of this kind, which is bound to end in child's play. I do not think that the people who sent us here, any of us, had any question of this kind in mind, that it was the business of this convention to locate either the permanent or temporary capital of this state, and I hope that the good sense of the convention will obtain and that we will not mix up either the making or the adoption of this constitution with anything of that kind, which we all know belongs to the people of Montana to settle. It is for them to say where the seat of government of the new state shall be located. I hope, Mr. Chairman, that we will so amend this section that the words "At its third regular session" will be stricken out, and the section be amended so that the Legislature at its first, second or third session will have full power over this matter and submit the same to the people of Montana. I do not think we ought to bring it into this convention, and at the end I hope all after the words "general election" will be stricken out. The seat of government of the Territory is fixed by law, and as soon as you have placed it in the power of the Legislature and the Legislature submits it to the people, it can either be removed or changed. Now, we cannot waste our time on this matter, and after all, I fancy that is the conclusion we will come to I hope we will not waste our time this morning in this frivolous sort of way.

Mr. Marshall, of Missoula: Mr Chairman, it seems to me that there is nothing now in the law that fixes where the first Legislature of this state shall meet There is no obligation so far as I understand it in the Enabling Act or any other law that requires the capital to be at Helena or any other point until this convention decides that question.

Mr. Maginnis, of Lewis & Clarke: The Enabling Act says, it shall meet at the seat of government.

Mr Marshall, of Missoula: The convention.

Mr Maginnis, of Lewis & Clarke. Yes, and the Legislature. And, Mr. Chairman, the laws of the Territory prevail under that Enabling Act until they are repealed by the constitutional laws of the state. I do not think this constitutional convention should make any reference to this thing except to place it in the power of the Legislature to attend to the matter. Now, I ask unanimous consent of the convention to offer the following amendment.

Mr. Cooper, of Gallatin: I object. My amendment has been ruled out of order.

Mr. McAdow, of Fergus. I move that the committee do now rise and that the Chairman be instructed to report Proposition No. 18 back to the house for their immediate consideration. I make this motion in the interest of time because this Committee of the Whole has taken up a great deal of our time, and I can see no benefit from it.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Fergus, (Mr. McAdow) and a division being called for the same was declared lost by a vote of 17 in the affirmative to 37 in the negative.

The Chairman: The Chair will submit the amendment of the gentleman from Custer which is to insert "Billings" instead of "Anaconda."

Mr. Burleigh, of Custer: Mr. Chairman, in support of my motion I desire to say a few words only. If the capitol is to leave Helena and is not to be located permanently on wheels, I think Billings is the most desirable location for it in the state of Montana and for the following reasons: In the first place, it is a beautiful location. It is a place where a gentleman can go and stand erect upon both feet and look up towards heaven with all the ease necessary, instead of being compelled to stand on one foot and put the other one against the side of a hill (Laughter) Another reason is, that they have beautiful water there, the finest in the world, and there is no inducement, no incentive, no necessity for a man resorting to a whiskey shop to slake his thirst for fear of being poisoned with the water that percolates down through the poisonous soil and the guts and gutters of the country. Another reason is, that it is located upon the banks of the beautiful Yellowstone, whose crystal waters flow past there, carrying off everything that might be impure and desirable to get rid of. Another thing is, it is not surrounded by pine knots and pine timber, in consequence of which where a conflagration might come, as has been witnessed here recently, men are deprived of the blessings of inhaling the pure air of heaven. Another reason is, that they have there all that is necessary to build a capitol of the most permanent character. They have the finest quarry of stone in the world there, lying in proximity to that town. And while they have not as many buildings as they have in some other localities, for instance in Anaconda or Butte or in Helena, they have time before them. They have a location where they can take the stone from the quarry and build one of the most beautiful capitols in the world. I have looked the country all over. I have been to Butte. I happened to be there last November when they had a visitation of east wind and instead of bringing the fragrant breezes which usually come from the east, it brought the fumes from the smelters and was enough to strangle a man I recollect going up in the motor in the middle of the street, and although electric lights were burning with all their effulgence yet you could not see a gleam of light from either side of the street. I retired to my bed. I had not been there thirty minutes before I felt that some demoniacal fiend was there injecting boiling lime into my lungs. I went to the Courthouse the next morning and met one or two of my friends who suggested I leave the cow counties and dwell in that city where gold could be obtained by reaching for it, where copper was so abundant that they scarcely knew what to do with it, and the silver-bearing mountains are inexhaustible. I suggested to him—and I admit I was not feeling very well or in the best of humor, for whatever cuts off the supply of air to my lungs has a tendency to irritate my otherwise amiable nature—I suggested to the gentleman that it was a little singular that all the men I had met who had attempted to depict to me the beauties of that country they had omitted its cardinal feature. He wanted to know what it was. Said I the constitution of your atmosphere. Said he, "What is in our atmosphere that you like so much?" "I was not talking about my likes," said I, "but those qualities which should recommend it to a stranger, and especially a citizen of Butte." He wanted to know what it was. "Why," said I, "it is the brimstone in it; it is the antimony in it." "Why," said he, "what is there so desirable about it?" "Why," said I, "nothing especially, but to a citizen of Butte is must be very consoling to know that the transition from this world to Sheol will be so slight that you will never notice it." (Laughter) Now, as to Anaconda, it has one thing to commend it. It has Marcus Daly's hotel. That is a grand thing, I have no doubt, and if I ever happen to go into that country I will go and take a look at it, for I have heard it is grander in its magnificance than the temple built by Solomon; whether it has an Ark of the Covenant, I don't know, (Laughter) but I presume it has. Now, in regard to other places, I think all of the advantages are inferior to those presented by Billings, and I hope that if there should be any action taken upon this question today that my amendment will prevail. I am certain that while we may be cursed for the present we will be blessed in the future, and coming generations will say, "How wise were the men who could look beyond the blandishments of their time and locate the capitol of this state in such a beautiful place."

Mr. Maginnis, of Lewis & Clarke: I move, Mr. Chairman, that the committee do now rise.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Maginnis) and a division being called for the same was declared lost by a vote of 18 in the affirmative to 32 in the negative.

The Chairman: The question recurs on the amendment of the gentleman from Custer, to insert Billings instead of Anaconda.

The Chair put the question on the said motion of the gentleman from Custer, and a division being called for the same was declared lost by a vote of nineteen in the affirmative to twenty-six in the negative.

Mr. J. K. Toole, of Lewis & Clarke: I move that the committee do now rise.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. J. K. Toole) and a division being called for, the same was declared lost by a vote of twenty in the affirmative to thirty-two in the negative.

The Chairman: The question now recurs on the motion to substitute the word "Butte" instead of "Anaconda."

Mr. Rickards, of Silver Bow: Mr. Chairman, I do not know that it is necessary for me to say a word in favor of my amendment. To the eloquent speech of my friend from Custer, I will add in addition to the very many good things that he said about Butte that it is literally a city that is set upon a hill and its light cannot be hid by even the eloquence of the gentleman from Custer, nor the smelter fumes that he has depicted here so graphically. In the location, Mr. Chairman and gentlemen, of the capitol of Montana temporarily, I am really actuated by a desire that in its location we may fix it at that point where it will be as nearly as possible in the center of the populous districts. Butte City has all of the advantages that any other point that has been mentioned here unless it may be Billings in point of water supply and atmosphere; and it has many other attractions superior to any that have been mentioned. It is as much of a railroad center as any place in Montana, or will be within a few months.

it is accessible. We have as you all know a growing town, a town that has not only made its mark in Montana, but in the history of the nation, and its sun has not yet set. I believe, gentlemen, that in the location of the capitol at Butte City you will serve the best interests of not only Butte City but all Montana. And I do most sincerely hope that the amendment that I have offered will prevail.

Mr. Craven, of Lewis & Clarke: I move that the committee now rise.

The motion was seconded.

Mr. Burleigh, of Custer: I desire to make—(interrupted)

The Chairman: The gentleman from Custer is certainly out of order. There is a motion before the committee to rise.

Mr. Bickford, of Missoula: I rise to a point of order. There has been no motion put to the house since the last motion that the committee rise.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, if that were the order, the committee would never rise. After any intervening business it is in order to move that the committee rise.

Mr. Rickards, of Silver Bow: I rise to a point of order.

The Chairman. The gentleman from Silver Bow is out of order.

The Chair then put the question on the motion of the gentleman from Lewis & Clark (Mr. Craven) and a division being called for the same was declared lost by a vote of twenty-three in the affirmative to thirty-three in the negative.

Mr. Rickards, of Silver Bow: I rise now to a point of order and I would like to ask for a ruling from the Chair. After a motion has been made and presented to the house by a chairman and a speech has been made in favor of it, is a motion that the committee rise in order?

The Chairman: It is always in order.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, business having intervened since the last motion, the speech of the gentleman from Silver Bow, I move that the committee now rise.. (Laughter)

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Maginnis) and a vote being taken the same was declared lost.

Mr. J. R. Toole, of Deer Lodge: I appeal from the last decision of the Chair and I call for a division of the committee.

The motion was seconded.

Mr. Callaway, of Madison. I rise to a point of order The gentleman who made the motion, I am satisfied, is aware that no vote on appeal can be taken from the decision of the Chair in Committee of the Whole.

Mr. Maginnis, of Lewis & Clarke: I wanted to say that is one reason why I wish the committee to rise so we can go into convention and decide that point of order.

The Chairman: The gentleman from Lewis & Clarke is out of order.

Mr. Craven, of Lewis & Clarke: I move that we reconsider the vote taken last, that we should rise, in which it was decided we should not rise.

The motion was seconded.

The Chairman: The gentleman is not in order. The question now is upon the motion of the gentleman from Silver Bow to substitute Butte City instead of Anaconda.

The Chair put the question on the said motion of the gentleman from Silver Bow and a division being called for the same was declared lost by a vote of twenty-four in the affirmative to thirty-three in the negative.

The Chairman: The motion is now upon the substitute of the gentleman from Gallatin. The Clerk will please read the substitute.

The Clerk read as follows: Substitute for Section 2. The Legislative Assembly shall have no power to change or locate the seat of government of the state, but shall at its second regular session after the adoption of this constitution provide by law for submitting the question for the permanent location of the seat of government to the qualified electors of the state at the general election then next ensuing and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said Legislative Assembly shall also provide that in case there shall be no choice of location at said election the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the state at the next general election. Provided that until the seat of government shall have been permanently located as herein provided the temporary location thereof shall be and remain at the City of Bozeman.

The Chair put the question on the said substitute of the gentleman from Gallatin, and a division being called for, the same was declared lost by a vote of eighteen in the affirmative to twenty-seven in the negative.

The Chairman: The amendment of the gentleman from Silver Bow is in order.

Mr. Warren, of Silver Bow: I move that the word Helena be substituted.

Mr. Collins, of Cascade: There was a motion from the gentleman from Choteau County made quite a while ago.

The Chairman: That motion was ruled out at the time. The question now recurs on the motion of the gentleman from Silver Bow to substitute Helena for Anaconda.

The Chair put the question on the said motion of the gentleman from Silver Bow and a division being called for the same was declared lost by a vote of twenty in the affirmative to thirty-five in the negative.

Mr. J. K. Toole, of Lewis & Clarke: I move that the committee do now rise.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. J. K. Toole) and a division being called for the same was declared lost by a vote of twenty-four in the affirmative to twenty-seven in the negative.

The Chairman: The question now recurs on the substitute of the word "Anaconda" in the blank proposition.

Mr. J. R. Toole, of Deer Lodge: Mr. Chairman, is there a question before the house?

Mr. Browne, of Choteau: I renew my motion that Fort Benton be substituted.

Mr. Buford, of Madison: I move to substitute the words "Virginia City" for Anaconda.

The Chairman: The motion is out of order. The question is now on the motion of the gentleman from Choteau that the words "Fort Benton" be substituted in place of the word "Anaconda."

The Chair put the question on the motion of the gentleman from Choteau (Mr. Browne) and a division being called for the same was declared lost by a vote of twenty-four in the affirmative to twenty-seven in the negative.

The Chairman: The question now recurs upon the original motion of the gentleman from Silver Bow to insert "Anaconda."

Mr. Craven, of Lewis & Clarke: Mr. Chairman, I move you that the committee rise.

The Chairman: The question before the house is the amendment of the gentleman from Silver Bow, that the word "Anaconda" be inserted in the proposition.

Mr. J. R. Toole, of Deer Lodge: I have a proposition that I wish to state in relation to this capitol question and I have concluded that this is as opportune a time as I will get. I want to say in the first place that I came here, and my constituents came here, willing to abide by the decision of this convention wherever they may see fit to locate the state capitol, and also willing to accept the verdict of the people whenever it goes before them at an election. I want to present this thing to the members of the convention in a business light. I want to present it in the shape of urging as one of the claims we would put forth in favor of our city of Anaconda, and as a matter of economy to the state, that I have this proposition here to make to this convention, and I am ready to back it up. If it is the will of the members of this convention, and their verdict, to temporarily locate the capitol at our city, we will agree to furnish to the state ample, commodious quarters for all state officers, ample and commodious state officers for the Legislature, free of charge to the state, until such time as the vote of the people shall decide where the permament location of the capitol shall be. I do not make this in any spirit of buncombe. I am serious and earnest, and ready to back it up in any way that this convention may see fit to require. I think it will make a matter of five or ten thousand dollars to the state and economy is something that has been dwelt upon here a good deal in our deliberations so far, and as a matter it seems to me it ought to be taken into serious consideration by every member of this convention. It is a matter of five or ten thousand dollars a year to the state over any other proposition that has yet been made. I make this in all candor and seriousness and place it before the convention now for their deliberation and judgment and verdict.

Mr Burleigh of Custer: The gentleman is generous and they are able to do it at Anaconda They have a wonderful city there, but I am stoutly opposed to this convention resolving itself into a begging committee. I think the Territory of Montana is abundantly able to provide quarters for all of its public officers and the Legislative Assembly, and while I commend the generosity of the gentleman from Anaconda, and I know it emanates from a good and generous heart, yet I do not think it would be received by the people of this territory as complimentary or as directly in the course of true economy. I believe in true economy, and we are going to practice it here, and after having resolved upon that course we can certainly afford to pay for our public buildings. I have never been in Anaconda I do not know anything about it, but I have been as near it as Butte and I got enough of it as far as I travelled. And here, by the way, I desire to make a little one-sided remark for the benefit of my illustrious friend, whi said that its lights would not be obscured by the gentleman from Custer County. It is not necessary, they are already obscured by the odoriferous fumes which emanate from its furnaces.

The Chair put the question on the insertion of the word "Anaconda" in Section 2 of Proposition No. 18. A division being called for the same was declared carried by a vote of thirty-two in the affirmative to twenty-four in the negative.

Mr. Maginnis of Lewis & Clarke· Now, Mr. Chairman, I move to strike out in that section all after the words "general election".

The motion was seconded.

Mr. Warren of Silver Bow: Mr. Chairman I move that the committee do now rise.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Warren) and a vote being taken the same was declared carried.

IN CONVENTION

President Clarke in the Chair.

The convention was called to order.

Mr. Hershfield of Lewis & Clarke reported from the Committee of the Whole.

The President. The Chairman of the Committee of the Whole reports that the committee has risen and asks leave to sit again.

Mr. Maginnis of Lewis & Clarke: I move that when the convention adjourn it adjourn to four o'clock on Monday.

The motion was seconded.

Mr. Durfee of Deer Lodge: Before the convention adjourns I would like to ask leave of absence until Tuesday afternoon.

The President: If there be no objection the gentleman from Deer Lodge will be granted leave of absence until Tuesday afternoon. It is moved and seconded that when the convention adjourn it adjourn to meet on Monday at four o'clock.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Maginnis) and a vote being taken the same was declared carried.

Mr. J. R. Toole of Deer Lodge: I move we adjourn.

Mr. J K. Toole of Lewis & Clarke: I move that the convention now resolve itself into Committee of the Whole for the consideration of Proposition No. 18.

The motion was seconded.

The President: The question is on the motion to adjourn.

The Chair put the question on the motion of the gentleman from Deer Lodge (Mr. J. R. Toole) and a division being called for the same was declared carried by a vote of thirty-two in the affirmative to twenty-four in the negative.

The convention stood adjourned until Monday, July 29th, 1889, at 4 P. M.

TWENTIETH DAY.

Monday, July 29th, 1889.

Afternoon Session

The convention was called to order at 4 P. M. by the President.

The Clerk called the roll.

Mr. Rickards of Silver Bow: At the request of Mr. Dyer of Silver Bow, I would state that it is impossible for him to be here until tomorrow. I ask for him leave of absence until then.

The President: If there be no objection leave of absence will be granted.

Mr. Burleigh of Custer. Mr. Middleton my colleague expected to return today, and requested me to ask leave of absence for him until tomorrow when he will return.

Mr. President: If there be no objection, leave of absence will be granted to the gentleman from Custer.

Mr. Bullard of Jefferson also requested leave of absence for the day, which will be granted if there be no objection.

The Chaplain offered prayer.

The Clerk read the journal of the previous day.

Mr. J. K. Toole of Lewis & Clarke: I desire to present a communication and ask to have it read for the information of the convention.

The President: The communication offered by the gentleman from Lewis & Clarke will be read by the Clerk.

The Clerk read as follows: Helena, Montana, July 24th, 1889.

To the honorable members of the Constitutional Convention, Helena, Montana.

The Montana Society of Civil Engineers would respectfully represent to your honorable body that the subject of irrigation is now assuming the greatest importance to all the people of Montana; that in the near future there will be constructed large and extensive reservoirs, irrigating canals and other hydraulic works of great magnitude requiring a great amount of engineering skill and experience, and that the lack of competent professional advice may lead to great loss of capital and life, as has been demonstrated in this territory in the past and more recently in the terrible disaster at Johnstown, Pennsylvania; and the requisite safety can only be obtained through the inspection of the plans for all such works, and the works themselves, by competent engineers. That in other states, particularly in California and Colorado, the office of State Engineer has been created and the incumbent charged with the inspection and supervision of such works. We therefore, would respectfully recommend to your honorable body that a provision be incorporated in the constitution of the state of Montana creating the office of State Engineer, to be appointed by the Governor by and with the consent of the State Senate. We would respectfully suggest that amongst his duties one of the most important should be the examination of the plans of all proposed reservoir-dams; and the periodical inspection of all dams and reservoirs within the limits of the state, in such manner as may be provided. We would moreover respectfully recommend that in case the office is created, the State Engineer should be ex-officio a member of the commission in charge of the state lands.

And your petitioners will ever pray etc. (signed) B. H. Green. President Montana Society of Civil Engineers.

J. S. Kerrl, Secretary.

The President: If there be no objection this communication will be received and referred to the Committee on Irrigation.

Mr. Burleigh, of Custer, sent up a resolution.

The President: The resolution offered by the gentleman from Custer, Mr. Burleigh, will be read by the Clerk.

The Clerk read as follows: Resolved that all debate in Committee of the Whole shall be limited to five minutes for each member.

Mr. J. K. Toole of Lewis & Clarke: I move that be referred to the Committee on Rules.

The motion was seconded.

Mr. Kennedy of Missoula: I move to amend by adding the words "with instructions to report not later than tomorrow.'

Mr. J. K. Toole of Lewis & Clarke: I accept the amendment.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, (Mr. J. K. Toole) and a vote being taken, the same was declared carried.

Mr. Cooper of Gallatin sent up a report of the Committee of the Whole.

The President: The report of the Committee of the Whole on Proposition No. 14 will be read by the Clerk.

The Clerk read as follows: Report of the Committee of the Whole on Proposition No. 14, Rights of Suffrage:

Mr. President: Your Committee of the Whole to whom was referred Proposition No. 14, General File No. 12 on Rights of Suffrage, with Resolution No. 12, General File No. 8 on Suffrage, beg leave to report the same back to the convention with the following amendments which the committee recommend be adopted. Your committee would state that in the amendments offered reference to numbers of lines and sections are such as appear in printed bill.

Strike out all of Section 2 and insert the following: Section 2. Every male person of the age of twenty-one years or over possessing the following qualifications shall be entitled to vote at all general elections. First, he shall be a citizen of the United States; Second, he shall have resided in the state one year immediately preceding the election at which he offers to vote and in the county, town or precinct such time as may be prescribed by law, provided, first, that no person convicted of a felony shall have the right to vote unless he has been pardoned by the proper pardoning power: Provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution. Provided, that after the expiration of five years from the time of the adoption of this constitution no persons, except citizens of the United States, shall have the right to vote.

Strike out in line two, Section 7, the word "two" and insert the word "one". Strike out all of Section 9. Amend section 10 by inserting in line one after the word "shall" the words "have the power to" and insert after the word "pass" in same line the words "a registration and such other" and after the word "law" in said line the words "as may be necessary". Amend Section 11 by inserting after the word "hold" in the first line the words "the office of County Superintendent of Schools or". Also strike out first seven words of Section 11, "the Legislative Assembly may pass laws allowing", and insert after the word "amendment" in the same line the words "shall be eligible"; and strike out the words "the right". Strike out Sections 12, 13, 14, 15, 16, and 17 and substitute therefor the following section. Section 11. Any person qualified to vote at general elections in this state shall be eligible to any office therein except as otherwise provided in this constitution, and subject to such additional qualifications as may be, prescribed by the Legislature hereafter created. Insert additional section as follows: Assembly for city offices, and offices. Section 12. In all elections held by the people under this constitution the person or persons who shall receive the highest number of legal votes shall be declared elected.

The committee also recommend that resolution No. 12 acted upon unfavorably in the committee be stricken from the file. The committee further recommend that Proposition No. 14 as amended by them be printed.

(Signed) WALTER COOPER, Chairman.

Mr. Burleigh of Custer. I hope that the recommendation of the committee in regard to printing this report will prevail. It seems to me important it should be printed so that each one will have it on his desk.

The President: What is the pleasure of the convention.

Mr. Burleigh of Custer: I understand from the Chairman of the Committee of the Whole that it has been printed. If that be the case, and in consequence of the absence of Mr. McAdow who desires to offer an amendment to it, and who by reason of his physical infirmities is unable to be here today, I ask that the consideration of the bill be deferred until tomorrow, and I make as a motion that the report of the committee be received and that the further consideration of it be deferred until tomorrow.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer (Mr. Burleigh) and a vote being taken the same was declared carried.

Mr. J. K. Toole of Lewis & Clarke: I ask unanimous consent to make a report.

The President: The report of the Chairman of the Committee on Legislative Departments will be read by the Clerk.

The Clerk read as follows: Resolution No. 4, by Watson of Fergus. July 9th referred to Printing Committee. July 15th reported back without recommendation and placed on General File No. 5. July........referred to Committee on Legislative Departments.

Mr. President, your Committee on Legislative Departments have had the within resolution under consideration and have directed me to report the same to the convention with the recommendation that the same do not pass

(Signed) J. K. TOOLE, Chairman.

July 29th, 1889.

The President: What is the pleasure of the convention concerning this report.

Mr. Burleigh of Custer. I move that the report be adopted.

The motion was seconded.

Mr. J. K. Toole of Lewis & Clarke: I think under the rules that should go further and be considered in Committee of the Whole.

The President: The report will take its course and be considered in Committee of the Whole.

Mr. J. R. Toole of Deer Lodge: Mr. President, I move that Proposition No. 18, General File No. 17 be made the special order of business for Wednesday morning at 10 o'clock.

The motion was seconded.

The Chair stated the motion.

Mr. J. K. Toole of Lewis & Clarke: I move to amend, Mr. President, that a further consideration of Proposition No. 18 be postponed until after the consideration and the final passage of all propositions now pending intended to be embodied in the constitution of the State of Montana.

The amendment was seconded.

Mr. Burleigh of Custer: I move to amend by providing that Proposition No. 19 shall be made the special order for the day after tomorrow at 10 o'clock.

The motion was seconded.

The President: The Chair is of the opinion that being sub ject matter entirely different from the original motion the gentleman's motion is hardly admissible in the shape of the amendment. The question now is upon the amendment offered by the gentleman from Lewis & Clarke that the consideration of Proposition No. 18, General File No. 17 be postponed until after the consideration of all subjects which are to be incorporated in the constitution.

Mr. J. K. Toole of Lewis & Clarke: I desire to say a word or two in regard to the amendment which I have offered.

The President: The Chair would state to the gentleman from Lewis & Clarke that this being a motion which implies the suspension of the rules, is not debatable, and it will have to be received without debate.

Mr. J. K. Toole of Lewis & Clarke: I move to amend the motion which I made, Mr. President, to postpone the consideration of this proposition No. 18 until the second day before the time which this convention shall fix for its final adjournment.

The President. If there be no objection this amendment will be received in lieu of the previous amendment of the gentleman. The question then before the convention is that the motion of the gentleman from Deer Lodge be amended that the consideration of File No. 17 Proposition

No. 18 be postponed until the second day previous to the final adjournmen of the Constitutional Convention.

Mr. J. K. Toole of Lewis & Clarke: I desire to admit a parliamentary inquiry, does that involve a suspension of the rules? As I understand it, Mr. President, any matter which is placed upon the general file does not come up for consideration in the Committee of the Whole as a matter of course, but is subject to be taken up at the pleasure of the convention or the committee. If this be true and the General Order is not to be taken up for consideration in the order in which they are filed, but that it is subject to the Committee of the Whole for their consideration at their pleasure then I submit that this proposition does not involve a change or modification of the rule.

The President: The Chair would suggest to the gentleman that every proposition which is made a special order requires a two-third vote, and a suspension of the rules.

Mr. J. K. Toole of Lewis & Clarke: Does the Chair hold that any proposition which involves the suspension of the rules is not debatable?

The President: That is the rule.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, that the consideration of Proposition No. 18 General File No. 17 be postponed until the second day prior to the day set for the adjournment of the convention and a vote being taken the same was declared lost.

Mr. Burleigh of Custer: I now move that Proposition No. 19 the report of the Committee in regard to Legislative Departments, be taken up on Wednesday at 10 o'clock, for consideration.

The President: There is a question pending before the convention. The question before the convention is upon the motion of the gentleman from Deer Lodge to make General File No. 17, Proposition No 18 a special order for Wednesday at 10 o'clock.

Mr. Collins of Cascade: Mr. President, the Committee of the Whole reported to the convention that they had that file under consideration and asked for further time. I ask as a parliamentary inquiry, will this motion of the gentleman from Deer Lodge require a two-thirds vote?

The President: It requires a two-thirds vote to make any proposition a special order for any hour.

Mr. J. K. Toole of Lewis & Clarke: I move to amend by making this a special order for the third day before the final adjournment of this convention.

The Motion was seconded.

The Chair stated the motion

Mr. J. K. Toole of Lewis & Clarke: On that motion I demand the ayes and nays.

Mr. J. R. Toole of Deer Lodge: The convention has set no day for final adjournment at present and it seems to me that the amendment is indefinite. It seems to me in addition that the motion of the gentleman from Lewis & Clarke is not in order.

Mr. J. K. Toole of Lewis & Clarke: I believe that that is certain which is capable of being rendered certain, and this convention will fix the day for the final adjournment of the convention before it does adjourn.

The President: The Chair is of the opinion that the time will be of such a definite character as may be considered to be in order. If there be no objection the ayes and nays will be entered on the journal on the motion of the gentleman from Lewis & Clarke. The question is upon the amendment offered by the gentleman from Lewis & Clarke to make the consideration of File No. 17 a special order for 10 o'clock of the third day preceding the final adjournment of the convention.

Mr Collins of Cascade: I rise to a point of order. The Committee of the Whole upon Saturday had this matter under consideration and the Chairman of the committee was instructed to report to the convention the action of the committee and asked for further time. Now, my point of order is this, that it is in the hands of the Committee of the Whole, and that the action of the Committee of the Whole has precedence. That it is a higher motion than that to make this a special order, and until the Chairman of that committee reports it is not actually before the convention. The Chairman of the committee had only reported verbally, and had not written its final report from the Committee of the Whole, and so the matter is not before the convention at this time.

The President: The Chair is of the opinion that the Committee of the Whole is the creature of the convention and subservient to it in every way; that the convention can take action upon any subject no matter what may have been done in Committee of the Whole. The Clerk will call the roll and the ayes and nays will be entered on the journal on the motion of the gentleman from Lewis & Clarke.

The Clerk called the roll.

The vote stood as follows: Ayes—Breen, Browne, Buford, Burns, A. F.; Burns, A. J.; Burns, Edward, Cardwell, Carpenter, Cauby, Chessman, Conrad, Craven, Gibson, Gillette, Goddard, Graves, Hammond, Hershfield, Hobson, Joyes, Maginnis, Mayger, Muth, Rotwitt, Toole, Jos. K.—25.

Nays—Aiken, Bickford, Burleigh, Callaway, Collins, Cooper, Courtney, Dixon, Durfee, Hartman, Haskell, Hatch, Hickman, Hogan, Joy, Kennedy, Knowles, Kohrs, Loud, Luce, Marshall, Mitchell, Myers, Parberry, Ramsdell. Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Watson, Whitehill, Winston, Witter, Mr. President—38.

Absent: Brazleton, Bullard, Dyer, Eaton, Fields, Gaylord, Kanouse, Knippenberg, Marrion, McAdow, Middleton, Webster—12.

The Chair announced the vote and declared the motion of the gentleman from Lewis & Clarke lost.

The President: The question now recurs upon the original motion to make File No. 17, Proposition No. 18, a special order for 10 o'clock Wewnesday morning.

The Chair put the question on the said motion and a vote being taken the same was declared lost.

Mr. Burleigh, of Custer: I move that Proposition No. 19 relating to the Legislative Department be made the special order for Wednesday morning at 10 o'clock

The motion was seconded.

The Chair stated the motion.

Mr. Rickards, of Silver Bow: I would like to ask before that motion is put, is not this proposition to be filed for general orders?

The President: It has been printed and placed upon the file and is now to be taken up in the Committee of the Whole.

Mr. J. K. Toole, of Lewis & Clarke: What is the time for which it is asked to be made a special order?

The President: 10 o'clock on Wednesday morning.

Mr. Warren, of Silver Bow: I demand the ayes and nays.

The President: If there be no objection the ayes and nays will be placed on the journal.

The Clerk called the roll.

The vote stood as follows: Ayes—Bickford, Breen, Browne, Buford, Burleigh, Burns, A. F.; Burns, A. J.; Burns, Edward; Callaway, Cardwell, Cauby, Conrad, Cooper, Dixon, Gibson, Goddard, Graves, Hammond, Hartman, Hershfield, Hickman, Hobson, Joyes, Kennedy, Loud, Luce, Maginnis, Marshall, Mayger, Muth, Myers, Parberry, Ramsdell, Reek, Toole, Jos. K.; Watson, Witter, Mr. President—38.

Nays—Aiken, Carpenter, Chessman, Collins, Courtney, Craven, Durfee, Gillette, Haskell, Hatch, Hogan, Joy, Knowles, Kohrs, Mitchell, Robinson, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston—25.

Absent: Brazleton, Bullard, Dyer, Eaton, Fields, Gaylord, Kanouse, Knippenberg, Marrion, McAdow, Middleton, Webster—12.

The Chair announced the vote, and the rules requiring a two-thirds vote to carry the motion, the motion was declared lost.

Mr. J. K. Toole, of Lewis & Clarke: I move that the convention resolve itself into Committee of the Whole for the consideration of Proposition No. 19.

The motion was seconded.

Mr. Warren, of Silver Bow: I move to amend by taking up Proposition No. 18.

The amendment was seconded.

The President: The question before the convention is upon the amendment offered by the gentleman from Silver Bow to the motion of the gentleman from Lewis & Clarke.

Mr. Maginnis, of Lewis & Clarke: I call for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows: Ayes—Aiken, Breen, Callaway, Courtney, Dixon, Durfee, Goddard, Hartman, Haskell, Hatch, Joy, Kennedy, Knowles, Kohrs, Ramsdell, Reek, Robinson, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Watson, Whitehill, Winston, Witter, Mr. President—27.

Nays—Browne, Bickford, Buford, Burleigh, Burns A. F., Burns, A. J., Burns, Edward, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Craven, Gibson, Gillette, Graves, Hammond, Hershfield, Hickman, Hobson, Hogan, Joyes, Loud, Luce, Maginnis, Marshall, Mayger, Mitchell, Muth, Myers, Parberry, Rotwitt, Rickards, Toole, Jos. K.—36.

Absent: Brazleton, Bullard, Dyer, Eaton, Fields, Gaylord, Kanouse, Knippenberg, Marrion, McAdow, Middleton, Webster—12.

The Chair announced the vote and declared the amendment lost

Mr. Warren, of Silver Bow: I move to amend by taking up Proposition No. 24, Article on Municipal Corporations and Officers.

Mr. J. K. Toole, of Lewis & Clarke: I withdraw my motion.

Mr. Kennedy, of Missoula: I move that the convention resolve itself into Committee of the Whole for the consideration of general orders as they appear upon the file.

The motion was seconded.

The President: There is a question pending on the motion offered by the gentleman from Silver Bow to amend the motion of the gentleman from Lewis & Clarke that has been withdrawn.

Mr. Maginnis, of Lewis & Clarke: I move that the convention go into Committee of the Whole for the consideration of Proposition No. 10, General File No. 4, on Executive Departments.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Maginnis) and a vote being taken the same was declared carried.

The President: The convention is now resolved into Committee of the Whole for the consideration of Proposition No. 10, General File No. 4, article on Executive Departments. The gentleman from Cascade (Mr. Collins) will please take the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Collins of Cascade in the Chair.

The committee was called to order.

The Chairman: We have for our consideration Proposition No. 10, General File No. 4. The first section will be read.

The Clerk read section 1 as follows: Section 1. The Executive Department shall consist of a Governor, Lieutenant-Governor, Secretary of State, State Treasurer, State Auditor and Superintendent of Public Instruction, each of whom shall hold his office for four years or until his successor is elected and qualified, beginning on the first Monday of January next succeeding his election, except that the terms of office of those who are elected at the first election shall begin in accordance with the Act of Congress, known as the Enabling Act, approved February 22, 1889, and shall end on the first Monday of January, 1893. The officers of the Executive Department, excepting the Lieutenant-Governor, shall during their terms of office reside at the seat of Government where they shall keep the public records, books and papers. They shall perform such duties as are prescribed in this constitution and by the laws of the state. The State Treasurer shall not be eligible to his office for the succeeding term.

There being no amendment to section 1 the Clerk read section 2, as follows: Section 2. The officers provided for in section 1 of this article shall be elected by the qualified electors of the state at the time and place of voting for members of the Legislative Assembly, and the persons respectively having the highest number of votes for the office voted for shall be elected; but if no two or more shall have an equal and the highest number of votes for anyone of said offices, the two houses of the Legislative Assembly at its next regular session shall forthwith by joint ballot elect one of such persons for said office. The returns of election for the officers named in section 1 shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

Mr. Winston, of Deer Lodge: I move to strike out the word "no" in line four. It is a misprint. It does not make sense.

The motion was seconded.

The Chair stated the motion.

Mr. Maginnis, of Lewis & Clarke: That is a misprint. We will just strike it out by consent.

The Chairman: If there be no objection the word will be stricken out.

Mr Hickman, of Madison: I move to amend in line three after the word "of" and before the word "votes" by inserting the word "legal."

The motion was seconded.

The Chair stated the motion.

Mr. Robinson, of Deer Lodge: The words "number of votes" implies legal votes, and cannot be construed in any other way.

The Chairman: The Chair understands that the word vote certainly means a legal vote.

Mr. Kennedy, of Missoula: There has been a suggestion adopted—(interrupted).

The Chairman: There is nothing before the committee. The Clerk will read section 3.

The Clerk read section 3 as follows: Section 3. No person shall be eligible to the office of Governor, Lieutenant Governor, or Superintendent of Public Instruction unless he shall have attained the age of thirty years at the time of his election, nor to the office of Secretary of State, State Auditor, or State Treasurer, unless he shall have attained the age of twenty-five years, nor to the office of Attorney General, unless he shall have attained the age of thirty years and have been admitted to practice in the Supreme Court of the state, or Territory of Montana, and be in good standing at the time of his election. In addition to the qualifications above described, each of the officers named shall be a citizen of the United States, and have resided within the state or territory three years next preceding his election.

There being no amendment to section 3, the Clerk read section 4 as follows: Section 4. The Governor, Secretary of State, State Auditor, Treasurer, Attorney General and Superintendent of Public Instruction, shall quarterly as due, during their continuance in office receive for their service compensation which is fixed as follows:

Governor, Five thousand dollars per annum;

Secretary of State, three thousand dollars per annum;

Attorney General, three thousand dollars per annum;

State Treasurer, three thousand dollars per annum,

State Auditor, three thousand dollars per annum;

Superintendent of Public Instruction, two thousand five hundred dollars per annum.

The Lieutenant Governor shall receive the same per diem as may be provided by law, for the Speaker of the Legislative Assembly, to be allowed only during the sessions of the Legislative Assembly. The compensations enumerated shall be in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office. No officer named in this section shall receive, for the performance of any official duty, any fee for his own use, but all fees fixed by law for the performance by either of them of any official duty shall be collected in advance, and deposited with the State Treasurer quarterly to the credit of the state. No officer mentioned in this section shall be eligible to or hold any other public office, except regents of the State University, during his term of office. Provided, however, the Legislative Assembly may provide for the payment of mileage to the Governor, Lieutenant Governor, Secretary of State, Attorney General and Superintendent of Public Instruction while traveling within the state in the performance of official duties.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, the Committee on Education have made that, "members of the State Board of Education" instead of "regents of the State University." Consequently the Committee on Executive Departments want it to conform to the report of the Committee on Education.

The Chairman: If there be no objection that change will be made. Insert "State Board of Education" instead of "regents of the State University" If there be no objection the amendment will be inserted.

Mr. Goddard, of Yellowstone: I wish to offer an amendment to the section that has just been read by inserting in the first line at the beginning of the section "until otherwise provided by law."

The motion was seconded.

The Chair stated the motion.

Mr. Maginnis, of Lewis & Clarke: I do not know that I particularly care to oppose the motion, but I want the committee to understand exactly what it means. In the Committee on Executive Deparments we had under discussion the question as to whether we should absolutely fix the salaries or whether we should leave it at the discretion of the Legislature to raise them or lower them, and the committee decided that we should fix them in the constitution. Now, if I understand the amendment of the gentleman, it provides that the Legislature shall have the power hereafter to fix them. Now, the Committee on Executive Departments, I think, have no opinions to urge upon the committee in reference to it, but will leave it to a vote of the committee whether they shall fix them as we have fixed them in the constitution, or whether they shall be left with the Legislature.

Mr. Clark, of Silver Bow: I am in favor of the amendment. I do not believe in making anything so inflexible Changes and circumstances here within a few years may render the salaries entirely inadequate. I believe they are not sufficient today Hence, I am in favor of leaving it in the power of the Legislature when Montana shall increase in population and the duties of those offices become more onerous that they may have the power to increase them. I do not look for any decrease because Montana will never go backwards

Mr. Maginnis, of Lewis & Clarke: As I have said, the committee has no choice in the matter, but I think that if the amendment prevails there ought to be an additional amendment as a safeguard and that is that the salary of no officer shall be changed during his term. The committee stand in favor of having the salaries as they are in the constitution.

Mr. Burleigh, of Custer I am entirely in favor of sustaining the report of the committee. I think the compensation is adequate and if any gentleman finds that he can make a little more at something else than he can in serving the public, he can either balance it up with patriotism or love of duty, or he can wait and go at something else. I am opposed to giving any man work against his will, and if he can make any more at any other position let him resign.

Mr. Goddard, of Yellowstone In comparing the article on judiciary, I see that one of the sections in that article fixes the salaries of the Supreme Court and the District Judges until the Legislature should fix them. I see no reason why that rule should not apply to this bill under consideration as well as in the bill on the judiciary. Now, it may be true hereafter that the salaries mentioned in this article will be too large. Then, in order to change them it would take a constitutional amendment. I am not in favor of incorporating anything in the constitution which it may be necessary to change hereafter by a constitutional amendment, which we can just as well provide for in the constitution now. Therefore, I hope the amendment which I have offered will prevail In relation to the suggestion made by the gentleman from Lewis & Clarke that there should be a provision there that the compensation of the officers should not be increased or diminished during the term of office. I am in accord with that and believe that that should be inserted in line nine of this section.

Mr. Luce, of Gallatin I would like to know what this amendment is and how the section would read?

The Chairman stated the amendment for the information of the gentleman from Gallatin

The Chair put the question on the said motion of the gentleman from Yellowstone (Mr Goddard) and a vote being taken the same was declared carried

Mr Reek, of Deer Lodge: I move to change in line six the words "two thousand five hundred dollars per annum" to "three thousand dollars per annum."

The motion was seconded.

The Chair stated the motion.

Mr. Reed, of Deer Lodge: Before the motion is put I lould like to explain that this office of Superintendent of Public Instruction seems to be a very important office, and I do not understand why there should be any discrimination in providing for the payment of that office. All the others receive three thousand dollars. It is an important office. It requires a man of intelligence and education to fill that office.

Mr. Robinson, of Deer Lodge: I am opposed to that, and for these reasons. I know, sir, that it is very common to distrust every man who has any tendency to interfere with the salaries connected with the public school system, but with all that I believe that the office of State Superintendent of Public Instruction is in fact a mere sinecure. It can serve but one purpose in connection with the public schools, in my opinion, after a careful consideration of the position, and that is simply to preserve the harmony in the system and the duties devolving upon the State Superintendent for that purpose are merely nominal, and would not require a month's time in twelve of his time. Now, if that is the case, it is not necessary to attach any importance to that office. So far as the government of the public schools is concerned it devolves upon the efficient work of the County Superintendent. If any man doubts this proposition, with all due deference to the Superintendent of Public Instruction of the Territory of Montana—and I presume it will move along substantially in the same groove under the state government as under the territorial government—let him look around and observe what the State Superintendent has performed with reference to the schools. I know, sir, that there are some of the counties in Montana that have not been visited by the Territorial Superintendent at all; I know in some of the counties where the Territorial Superintendent has been, his offices have been unimportant; he has done nothing more than to give, once a year, a set, stereotyped lecture, and make some few suggestions to the teachers of the schools, of minor importance. He would not be in the county but one or two days in the year, and that was about the extent of the service performed by the Territorial Superintendent of Public Instruction. So far as the efficient working of the public school system is concerned, so far as its efficacy is concerned, it devolves almost solely upon the County Superintendent. He can know but little of the wants of the respective schools except what he obtains of the County Superintendents who are usually as efficient as a State Superintendent. It devolves upon those who are personally present to give a general supervision of the affairs of the schools. The State Superintendent's work devolves upon this corps of officers and not upon his own shoulders. Then, I say that the office of State Superintendent is a matter of very small importance, and a compensation of five hundred dollars would be ample to cover all services in regard to our public school system. In saying all this I do not wish to strike any blow at the public school system, for, goodness knows, I have confidence enough in it, and I would be the last one in the state to strike a blow at the public school system. But while I feel that way, I do not think it necessary to go beyond reason and to attach undue importance to an office that has not that importance attached to it. Hence, I oppose the motion to increase the salary from twenty-five hundred to three thousand dollars, and the compensation should be cut down so that it would not exceed one thousand dollars.

Mr. Maginnis, of Lewis & Clarke: I hope the convention will stand by the committee in this matter. There is all the less reason for changing it now that you have already changed the first part of the section. We thought we would make the constitution ironclad so that the Legislature could not raise the salaries, and keep those state officers from lobbying with the State Legislature; but the very act of making that section flexible and leaving the whole thing to the Legislature would seem to indicate that the committee ought not to go any further. The old constitution fixed it at two thousand dollars and we fix it at tweny-five hundred dollars, and I hope the convention will stand by the committee without any further debate.

The Chair put the question on the amendment offered by the gentleman from Deer Lodge (Mr. Reek) and a vote being taken the same was declared lost.

Mr. Maginnis, of Lewis Clarke: Now, Mr. Chairman, in line nine, in order to make the section conform to the amendment already adopted, I move to insert after the word "office" the words "and the salary of no official shall be increased during his term of office." I am sure none of them will have to be cut down.

Mr Rickards, of Silver Bow: I would like to ask the gentleman if we have not already in some bill that we have adopted made the same provision?

Mr. Maginnis, of Lewis & Clarke: It would come in right here, and the Committee on Revision can strike it out in any other place it may appear, as surplusage

Mr. Craven, of Lewis & Clarke: I am heartily in accord with the intent of the proposition, but it seems to me there is no use of inserting it in this article. Section 31, Proposition No. 19, legislative departments, deals with this subject in a general way.

Mr. Maginnis, of Lewis & Clarke: We have not adopted that yet.

Mr. Craven, of Lewis & Clarke: But it seems to me it is as well where it is Sec. 31 of the article on Legislative Departments reads: "Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment." It seems to me that that covers the whole thing and is a general proposition

Mr. Maginnis, of Lewis & Clarke: The committee on revision can strike that out.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Maginnis), and the same was declared carried.

Mr. Robinson, of Deer Lodge: I move to amend section four by striking out the word "five" after the word "governor" in line three, and insert in lieu thereof the word "three"

Mr. Hershfield, of Lewis & Clarke: I move to amend that by inserting $3,500 instead of $3,000.

Mr Luce, of Gallatin: I move to amend section 4 as follows: Strike out in line three the word "three" and insert in lieu thereof the word "four."

The Chairman: The question is upon the amendment to insert $3,500.

Mr. Hershfield, of Lewis & Clarke: I think that is ample salary for the governor of the new state of Montana, and furthermore, we are not a rich state yet; our assessable property has not arrived at a very enormous sum, and we should not give any princely salaries to our officials; it is unrepublican and it is impolitic, and I trust my motion will prevail.

Mr. Rickards, of Silver Bow: I want at this time to enter my protest against any scheme that seems to prevail here to adopt a schedule of salaries that has the appearance of being niggardly. I don't believe in entering upon statehood that we can afford to place the salaries of some of these high offices at such a point that none but the wealthy and the bloated bondholders, as we sometimes speak of them disrespectfully, can aspire to them (Applause) I am opposed to that principle. I believe in fixing the schedule of salaries for our state offices we ought to fix them at such a figure that the poorest and most honorable and honest men of Montana can aspire to fill those offices without making a sacrifice. (Applause) I hope this amendment will not prevail. I hope the original proposition will not prevail. I am in favor of adopting the report as it comes from the hands of the committee, and especially in view of what the gentleman from Lewis & Clarke (Mr Maginnis) has already said, that we have already adopted this section so as to leave it in the hands of future legislatures I think we can safely leave it there, and therefore I hope this amendment will be voted down.

The Chairman: There are two amendments before the committee, one to strike out and insert $3,500, and the other to strike out and insert $4,000. The question is upon the last amendment.

Mr. Hershfield, of Lewis & Clarke: I withdraw the amendment of $3,500, and accept the amendment of the gentleman from Gallatin county (Mr. Luce) of $4,000.

The Chair put the question on the amendment of Mr. Luce of Gallatin, and the same was declared lost

Mr. Joyes, of Jefferson: I move to amend by striking out and inserting $3,500.

The motion was seconded.

The Chair put the question on the amendment of the gentleman from Jefferson (Mr. Joyes) and the same was declared lost.

Mr. Hickman, of Madison: I would like to ask the chairman of the committee what he is going to do with the Lieutenant Governor?

Mr. Maginnis, of Lewis & Clarke: We provide that he shall receive the amount that the speaker of the House receives.

Mr. Hickman, of Madison: Suppose the Governor should be absent from the state?

Mr. Maginnis, of Lewis & Clarke: Whenever he acts as Governor he receives the Governor's salary.

Mr. Callaway, of Madison: This is a matter of phraseology the whole thing, but it seems to me in going before the committee this amendment should be made. In line 12 in place of the word "either" I move the words "any one" should be inserted.

The motion was seconded.

The Chair put the motion and the same was declared carried.

Mr. Carpenter, of Lewis & Clarke: I move to strike out all of the proviso, commencing at the middle of line 15.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

The Chairman: If there are no further amendments to section 4, the Clerk will read section 5.

The Clerk then read section 5, as follows. "Sec. 5. The Supreme executive power of the state shall be vested in the Governor, who shall see that the laws are faithfully executed."

There being no amendments to section 5, the Clerk read section 6, as follows: Sec 6. The Governor shall be Commander-in-Chief of the militia forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part of the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion."

There being no amendments to section 6, the Clerk read section 7, as follows: "Sec. 7. The Governor shall nominate, and by and with the consent of the Senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If, during a recess of the Senate a vacancy occur in any such office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the Senate, when he shall nominate some person to fill such office. If the office of Secretary of State. State Auditor, State Treasurer, Attorney General or Superintendent of Public Instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the Governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law.'

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, in regard to the next section, section 8, it was referred to the Committee on Judiciary, that being the section on pardoning power. I hold in my hand the report of the Judiciary Committee and move that it be inserted as one section—as section 8.

The Chairman: Are there any amendments to section 7?

Mr. Goddard, of Yellowstone: It occurs to me that this section will conflict with some other articles that have been adopted by the convention. In the second line that section provides that the Governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by the constitution. The judiciary act provides for the election of certain officers, and in case of a vacancy, the appointment by the Board of County Commissioners—for instance, a justice of the peace or county attorney.

Mr. Maginnis, of Lewis & Clarke: I beg the gentleman's pardon—"And whose appointment or election is not otherwise provided for." If the gentleman will finish the reading of the section, I think he will find the point is covered.

Mr. Goddard, of Yellowstone: I would suggest that instead of inserting the words "in this constitution," if the words "in this article" were substituted in the second line, it would obviate a possible difficulty.

Mr Maginnis, of Lewis & Clarke· I think the section is right as it stands.

The Chairman. If there be no amendments, the section will stand.

Mr. Goodard, of Yellowstone. I merely offered the suggestion.

The Chairman: The motion now is to insert the report of the Judiciary Committee as section 8. The Clerk will read the report.

The Clerk read as follows: Section 1. The Governor shall have the power to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutation of punishments and respites after conviction and judgment for any offenses committed against the criminal laws of the state; Provided, however, that before granting pardons, remitting fines and forfeitures, or commuting punishments, the action of the Governor concerning the same shall be approved by a Board, or a majority thereof, composed of the Secretary of State, Attorney General and State Auditor, who shall be known as a Board of Pardons.

Sec. 2. The Legislative Assembly shall by law prescribe the sessions of said Board, and the manner in which applications shall be made, and regulate the proceedings thereon. But no fine or forfeiture shall be remitted, and no commutation or pardon granted, except upon the approval of a majority of said Board, after a full hearing in open session, and until notice of time and place of such hearing, and the relief applied for shall have been given by publication in some newspaper of general circulation in the county where the crime was committed, at least once a week for two weeks. The proceedings and decision of the Board shall be reduced to writing, and with their reasons for their action in each case, and the dissent of any members who may disagree, signed by them, and filed, with all papers used upon the hearing, in the office of the Secretary of State

Sec. 3. The Governor shall communicate to the Legislative Assembly, at each regular session, each case of remission of fine or forfeiture, reprieve, commutation or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon or reprieve, with the reasons for granting the same, and the objections, if any, of any member of the Board made thereto.

The Chairman The question is upon the adoption of these three sections as one section to be known as section No. 8.

Mr. Carpenter, of Lewis & Clarke. I offer the following as a substitute.

The Chairman: The following substitute is offered.

The Clerk read as follows: The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason, and cases of impeachment upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason he shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Mr. Carpenter, of Lewis & Clarke, moved the adoption of the section.

The motion was seconded

The Chair stated the motion.

Mr Carpenter, of Lewis & Clarke: Mr. Chairman, the difference between the original sections and the substitute offered is this: These sections provide for a Board of Pardons; that substitute as offered provides for a pardon by the Governor. That has been the rule that has been in operation in this country from the time of the adoption of the constitution of the United States, with two or three exceptions. Where those exceptions have been tried, as I understand it, they have never worked well. The object of the rule is that this responsibility of pardon must be placed somewhere, there must be some authority accountable for it, and there can be but small accountability where the responsibility is divided between three or four persons. Possibly, sometimes there are too many pardons granted by a Governor, possibly, sometimes, not enough. It may have happened in this Territory that some Governors have gone too far and some not far enough. Possibly they did not know the criminals of this Territory as well as they should have done. But that will be changed by this constitution which we are to adopt, so far as the knowledge of the officials, of the people and criminals of the Territory is concerned. I certainly think it would be unwise. It has not always worked to perfection to change the system, for I think there is no system that will work to perfection, and I think it would be unwise to jump out of the frying pan into the fire—to depart from this well settled rule and try one unknown. Now, that is the chief distinction and difference between the motion made and the substitute offered. They differ in some other minor particulars. But upon this simple question of responsibility and accountability of the official, I think it is almost the universal concurrent testimony of people who have observed the workings of the two different systems in the different states, that the pardoning power should be vested in the Governor, and he should be held to a strict accountability.

Mr. Burleigh, of Custer: I am very sorry to have to differ with my learned friend from Lewis & Clarke County, but so far as the responsibility is concerned, I do not know where there is any more danger in resting it upon the shoulders of four men who are made officers for that express purpose than in resting it upon the shoulders of one. It seems to me there is a greater safeguard. Now, several of the states of this Union, among them the state of Pennsylvania, became so much incensed at the action of their Governors—and they are supposed to be honorable men and men of character—they were so indiscreet with their actions that they were compelled to resort to a Pardoning Board, and did so; and no man can get to be pardoned out of the penitentiary unless the matter goes before the Pardoning Board, who are responsible, reliable and intelligent men, and they recommend it. And it seems to me that the very argument which the gentleman uses as his reason against it may be urged more emphatically in favor of the Pardoning Board. I hope the suggestion of the committee, which, by the way, consumed a good deal of time in examining the authorities of the different constitutions, will prevail.

Mr. Dixon, of Silver Bow: There are some differences of opinion in the Judiciary Committee as to the pardoning power, but there were a large majority of that committee in favor of a Pardoning Board, and certainly it seems to me that it is as good a system as any that can be suggested. The pardoning power is one of which great complaint has been made under other systems. Now, this article provides that the Governor may grant a pardon, but he can only do so upon the approval of a Board of Pardons. Opportunity is given to the applicant or person who may be interested in seeking the pardon, and other parties interested may have an opportunity to make argument against the grant of pardon; and every action of the Governor by the approval of the Board will be reported to every session of the Legislature, stating the pardons that have been granted and the reasons given for granting them. Now, certainly, under those circumstances, it seems to me there will be much less abuse of the pardoning power than where it is vested solely without any practical responsibility in one single man. The action must have the approval of three high state officers, and they must only have acted upon proper notice and must be able to give a reason for the action they have taken. I do not see myself how any greater safeguard can be provided, and I think it might be safely said that under this system the Governor could not grant a pardon of his own accord because this Board would be equally responsible with him, and that would be a sufficient restraint upon him in case of any influences being brought to bear upon him personally which might otherwise induce him to grant a pardon upon unwarrantable grounds. No pardon could be granted until the whole matter was considered, and then only upon the concurrent recommendation of the Governor and a majority of this Board.

Mr. Clarke, of Silver Bow: The domain of the one-man power and principle is rapidly narrowing down as the civilization of the century advances, and I venture to say that if heretofore the pardoning power had been vested in three or four men instead of one, and a proposition were made that this be abolished and the pardoning power be vested in the Governor of the state, that it would strike us all with amazement. I do not believe in putting so important a matter in the hands of one man. We may be unfortunate enough to elect a weak man to the office of Governor of the state of Montana, a man who would be governed to a great extent by his prejudices, and a man who might go still farther and be actuated by bad and dishonest motives. We can readily see that in cases where an election would be pending and the Governor could for mere political considerations grant a pardon to some individual belonging to a particular race, or sect, or nationality, thereby securing a large influence in behalf of the party to which he belonged—we can readily see how this great privilege might be abused. I cannot understand why objection should be had, or why any evil consequences could arise by putting this power into the hands of three or four learned men. We know that when a matter of this kind is considered by two or more, that they are more liable to arrive at a just conclusion than one man who is not guided by such counsel. Hence, I am in favor of sustaining the report of the committee, who have, no doubt, given this matter due consideration, and whose conclusions I believe to be correct.

The Chair put the question on the adoption of the substitute offered by Mr. Carpenter, of Lewis & Clarke, and the same was declared lost.

Mr. Callaway, of Madison: I wish to offer an amendment.

The Chairman: The amendment of the gentleman from Madison will be read.

The Clerk read as follows: Insert after the word "state" in line 3, section 1, the words "except for treason and in cases of impeachment."

The motion was seconded.

The Chair stated the motion.

Mr. Callaway, of Madison: Before this vote is taken I want to say to the gentlemen of this committee that the only object of that amendment is to insert in this constitution the opinions of the gentlemen who have the honor to occupy this floor, that this convention may place its seal of condemnation upon any one man, or any set of men, who may be, in this country of ours, guilty of raising his hand against the government. The most of the gentlemen who occupy this floor can remember when treason was abroad in our land, a day when the heavens were clothed in mourning and all this broad, good land of ours was filled with sorrowing women and weeping Rachels. We know what that cost us, and while that time has so long passed that we have almost forgotten it, and we are all satisfied that we will never see a day again such as those days were, I desire to see placed in our organic act, now that we are forming a fundamental law for the government of a country that is an empire within itself—I desire that we shall place our seal of condemnation upon him who would be disloyal to the country in which he lives. Mr. Chairman, I trust the gentlemen of this committee will not forget that the crime of treason after due conviction is the unpardonable sin.

The Chair put the question on the motion of the gentleman from Madison, and the same was declared lost.

The Chairman. The question is upon the adoption of the proposition of the Judiciary Committee on pardoning power, as one section, to be known as section 8.

The vote was taken and the said motion was declared carried.

The Chairman: The Clerk will read section 9.

The Clerk read section 9, as follows: "Section 9. The Governor may require information in writing from the officers of the Executive Department upon any subject relating to the duties of their respective offices, which information shall be given upon oath, whenever so required, he may also furnish information in writing at any time, under oath, from all officers and managers of State Institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may, at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution. The Governor shall at the commencement of each session, and from time to time by message, give to the Legislative Assembly information of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall also send to the Legislative Assembly a statement with vouchers of the expenditures of all moneys belonging to the state and paid out by him. He shall also at the commencement of each session present estimates of the amount of money required to be raised by taxation, for all purposes of the state."

Mr. Hershfield, of Lewis & Clarke: Right here in this place I deem it necessary to suggest an additional clause which I think will come in very well.

The Chairman: The gentleman from Lewis & Clarke offers the following as an additional clause.

The Clerk read as follows: The Treasurer may be suspended from office by the Governor during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has in any particular violated his duty. The Governor shall appoint a competent person to discharge the duties of the office during such suspension of the Treasurer. Ample bonds must be furnished by the person appointed to act as Treasurer.

Mr. Hershfield, of Lewis & Clarke: I think, Mr. Chairman, that that is a provision that we ought to incorporate in our constitution. It is one that would surround the Treasurer and give him no opportunity for any speculations or peculations, and such authority, it seems to me, ought to exist in the Governor. There are cases in the history of numerous states where a lack of authority of that kind resulted not only in disastrous loss to the state but also in disastrous loss to the bondsmen who went on the bonds of the Treasurer; and it is a protection not only to the state but to all men who are at times compelled by persuasion or otherwise to go on bonds for Treasurers. I see no harm in the amendment, and it may result in a great deal of good.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, it appeared to me as my friend read his substitute or amendment, that it was placing rather an arbitrary power in the hands of the Governor. The committee did not examine that subject, and I would suggest that he withhold it for the present so that we can look at it carefully, with the understanding that when he is ready we can go back to this section.

Mr. Hershfield, of Lewis & Clarke. That is satisfactory to me and I will withdraw the amendment for the present.

Mr. Rickards, of Silver Bow: I move that the committee do now rise, report progress and ask leave to sit again.

The motion was seconded.

The Chair put the motion and the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

Mr. Collins, of Cascade: Mr. President, the Committee of the Whole have had under consideration Proposition No. 10, General File No. 4, have made various amendments to the same, and now report back to the convention and ask that further time be granted for its further consideration.

The President: The Chairman of the Committee of the Whole reports that they have had under consideration General File No. 4 on the Executive Departments. They have made progress and desire leave to sit again. If there be no objection leave will be granted.

Mr. Maginnis, of Lewis & Clarke: I move that the convention take a recess until 8 o'clock, with the understanding that the convention shall proceed with the consideration of this proposition this evening.

The motion was seconded.

The Chair put the question on said motion and the same was declared carried.

The convention took a recess until 8 P. M.

Monday, July 29th, 1889. Evening Session.

The convention was called to order by the President at 8 P. M.

The Clerk called the roll.

The President: The Chair would state that upon taking a recess at six o'clock the convention resolved upon the consideration of General File No. 4, Proposition No. 10, as the order of business for this evening. If there be no objection the convention will go into Committee of the Whole, and the gentleman from Cascade, Mr. Collins, will take the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Collins, of Cascade, in the Chair.

The committee was called to order

The Chairman. The committee will resume the consideration of section 9. Are there any further amendments to section 9? If not, the Clerk will read section 10.

The Clerk read section 10 as follows "Section 10 He may on extraordinary occasions convene the Legislative Assembly by proclamation, stating the purposes for which he has convened it, but when so convened, it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto. He may also by a proclamation convene the Senate in extraordinary sessions for the transaction of executive business."

There being no amendments to section 10 the Clerk read section 11 as follows: "Section 11. Every bill passed by the Legislative Assembly shall. before it becomes a law, be presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law, but if he do not approve. he shall return it with his objections to the house in which it originated. which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present in that house it shall then become a law notwithstanding the objections of the Governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. If any bill shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislature shall by their adjournment prevent its return, in which case it shall not become a law without the approval of the Governor. No bill shall become a law after the final adjournment of the Legislature, unless approved by the Governor within fifteen days after such adjournment. In case the Governor shall fail to approve of any bill after the final adjournment of the Legislature, it may be filed. with his objections, in the office of the Secretary of State."

Mr. Winston, of Deer Lodge, sent up an amendment to section 11.

The Chairman: The gentleman from Deer Lodge offers the following amendment: Strike out the word "present" in line 5, section 11, and insert instead the words "elected to that house." Also strike out the word "present" in line 7, section 11, and insert instead the words "elected to."

The motion was seconded.

Mr. Winston, of Deer Lodge. The reason I offer that, Mr. Chairman, is because this amendment is in most of the constitutions of the United States, and I think it should be there. There is great danger that there may be too much legislation, and if you put such a clause as that in the constitution it will require but a very few votes to override the veto of the Governor. The house can make such rules and regulations as will compel the attendance of absent members, and if the measure is a worthy one and the Governor should veto it and it fail to pass two-thirds of those elected, why, then, the natural inference is that it should not pass. Certainly six members out of sixteen and eighteen out of fifty should not be allowed to veto the Governor. I think it is a wise precaution that two-thirds of the members elected, instead of two-thirds of those present should be made to override the veto of the Governor. Why we should make it here two-thirds of the members present I cannot see, for the reason that if a measure has not any merit in it and the party should wish to get it through the senate or the house. notwithstanding the veto of the Governor, why, all he would have to do would be to find some pretext to get the members absent, and by six votes in the senate and eighteen in the house have it passed. It seems to me that it would be a very wise precaution to require two thirds of the members elected to the house to override the veto of the Governor.

Mr. Burleigh, of Custer: I would like to call the attention of the house to the rule in Congress that the two-thirds by which a vetoed bill is required to be approved before it becomes a law has been stated in both houses to be two-thirds of the members present.

Mr. Maginnis, of Lewis & Clarke: The committee have been very liberal with the veto power. We have followed the example of New York to the fullest extent and have allowed the Governor power to veto single items of appropriation bills; we allow him to approve matters after the Legislature adjourned and we provide against what has been called pocket vetoes. Now, of course it requires a quorum to do business in either house, and I think the very argument the gentleman made is against his proposition. It is very easy for a minority or a majority to compel the attendance of a full house, either in a house or senate. I think the proposition ought to stand as it is in the bill.

Mr. Winston, of Deer Lodge: Mr. President, the constitution of the United States requires two-thirds of the house; it does not require two-thirds of those present.

Mr. Maginnis, of Lewis & Clarke: But the construction that has been given to that is that two-thirds of the members of the house means two-thirds of a quorum, or two-thirds of those present.

The Chair put the question on the motion of the gentleman from Deer Lodge (Mr. Winston) and a vote being taken the same was declared lost.

Mr. Hershfield, of Lewis & Clarke: I would like to submit this proposition, which I want to follow section 9.

Mr. Maginnis, of Lewis & Clarke: We can go back to section 9.

The Chairman: Do you reserve your proposition until later?

Mr. Hershfield, of Lewis & Clarke: Yes sir.

The Chairman: The Clerk will read section 12.

The Clerk read section 12 as follows: "Section 12. The Governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts approved shall become a law; and the item or items disapproved shall be void, unless enacted in the manner following: If the Legislative Assembly be in session he shall within five days transmit to the house in which the bill originated, a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto."

There being no amendments to section 12, the Clerk read section 13 as follows: "Section 13. In case of the failure to qualify, the impeachment or conviction of felony or infamous crime of the Governor, or his death, removal from office, resignation, absence from the state or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the Lieutenant Governor."

There being no amendments to section 13, the Clerk read section 14, as follows: "Section 14. The Lieutenant-Governor shall be President of the Senate, but shall vote only when the Senate is equally divided. In case of the absence or disqualification of the Lieutenant-Governor, from any cause which applies to the Governor, or when he shall hold the office of Governor, then the President pro tempore of the Senate shall perform the duties of the Lieutenant-Governor until the vacancy is filled or the disability removed."

There being no amendments to section 14, the Clerk read section 15 as follows: "Section 15. In case of the failure to qualify in his office, death, resignation, absence from the state, impeachment, conviction of felony or infamous crime, or disqualification from any cause, of both the Governor and the Lieutenant-Governor, the duties of the Governor shall devolve upon the President of the Senate pro tempore until such disqualification of either the Governor or Lieutenant-Governor be removed, or the vacancy filled, and if the President of the Senate for any of the above named causes shall become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House."

There being no amendments to section 15, the Clerk read section 16 as follows: "Section 16. The first Legislative Assembly shall provide a seal for the state which shall be kept by the Secretary of State and used by him officially and known as the Great Seal of the State of Montana."

There being no amendments to section 16, the Clerk read section 17, as follows: "Section 17. All grants and commissions shall be in the name and by the authority of the State of Montana, sealed with the Great Seal of the State, signed by the Governor and countersigned by the Secretary of State."

There being no amendments to section 17, the Clerk read section 18, as follows: "Section 18. An account shall be kept by the officers of the executive department, and of all public institutions of the state of all moneys received by them, severally from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the Governor, under oath; they shall also, at least twenty days preceding each regular session of the Legislative Assembly, make full and complete reports of their official transactions to the Governor, who shall transmit the same to the Legislative Assembly."

Mr. Goddard, of Yellowstone: I move to strike out the section just read by the Clerk for the reason that I think it is the province of the Legislature to enact those matters.

The motion was seconded.

The Chairman: It is moved and seconded that section 18 be stricken out.

Mr. Maginnis, of Lewis & Clarke: I hope that section will not be stricken out. It seems to me the substance of that was offered in a resolution I think by the gentleman from Madison, and was considered an efficient check upon the officers of the state, inasmuch as the Governor should be able at any time to call upon them for an account of the finances, and that it was necessary also that he should have this power in order that he should submit his estimates to the Legislature, which are provided for in another section of the constitution. It seems to me it should stand.

Mr. Burleigh, of Custer: It seems to me a very wise and indispensible clause in the constitution.

Mr. Bickford, of Missoula: I have had but a moment to consider the section, but it seems to me that it is a matter for the Legislature. The Legislature has control over all these matters, and I do not think we ought to interject at this point what is simply a matter for the legislature to deal with hereafter.

Mr. Maginnis of Lewis and Clarke: If the gentleman will notice, in another provision of this constitution, it is provided that the Governor shall submit an estimate of the probable expenses of the State government to the Legislature.

Mr. Bickford, of Missoula: These reports are made under the laws as they now are. The reports are made by the different officers to the Executive. The law as it stands upon the Statute books to-day provides for all that. I presume the laws will be re-enacted or at least re-amended so as to cover all those things, and it seems certainly as if this section were entirely useless for any proper place in the constitution. To require a Governor to keep a set of books, or any officer to keep a set of books, it comes within the law to say what books shall be kept by the particular officers. These duties are all prescribed by law, not by the constitution.

Mr. Hartman, of Gallatin: I would call the attention of the gentleman to section 9. It seems to me that this is fully covered by section 9.

Mr. Goddard, of Yellowstone: Inasmuch as I made this motion, I think it proper that I should say a word, although it has been very fully explained by the gentleman from Missoula. Now, if it is proper to enact such a clause as that in the constitution then it would be just as equally proper to put a clause in the constitution in relation to every officer of State and County, defining their duty, for instance, of the County Attorney or the Judge of the District—defining their duties from beginning to end. This section simply defines the duty of the officers of the territory. and in relation to that there is at present a statute governing all of that ground; and I see no reason why anything should be put in this constitution which is purely and essentially a subject of Legislative enactment.

Mr. Hershfield, of Lewis & Clarke: I regret very much that I have to differ with the report of the committee. The gentleman from Yellowstone has anticipated the remarks I intended to make on that proposition. It is absolutely useless; it is lumbering the constitution with material that has no place in it; it is simple legislation, and for that matter not to be incorporated in the constitution.

Mr. Knowles, of Silver Bow. I am in favor of both of these provisions for these reasons. In the first place these are provisions in the constitution which prescribe the duties of executive officers, and that is within the province of a constitution to do that. In the next place this Section

9 provides what the Governor may do; he may require of these officers a statement. Then comes in this Section 18 that says what these officers must do. They must keep these accounts so as to be able to report to the Governor upon his request. This simply prescribes what the Governor may require, his duties and powers in that particular, and all through in this proposition upon the Executive officer the powers of the executive department are defined and prescribed; and these officers such as are contemplated here are part of the executive machinery of the government. Now there is no necessity for any constitution prescribing what the duties of a District Attorney are; they can say these officers shall perform such duties as may be prescribed by law; but it is perfectly proper in a constitution that the duties of the executive department should be prescribed, and I believe that this is in the interest of an honest administration of the finances of the government, and I hope it will be sustained.

The Chair put the question on the motion of the gentleman from Yellowstone (Mr. Goddard) to strike out Section 18, and a vote being taken the same was declared lost.

The Chairman: The Clerk will read Section 19.

The Clerk read Section 19 as follows: "Section 19. The Governor, Secretary of State and Attorney General, shall constitute a Board of State Prison Commissioners, which Board shall have such supervision of all matters connected with the State Prisons as may be prescribed by law. They shall constitute a Board of Examiners, with power to examine all claims against the State, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claim against the State except salaries and compensation of officers fixed by law, shall be passed upon by the Legislative Assembly without first having been considered and acted upon by said Board."

Mr. Hershfield, of Lewis & Clarke, sent up an amendment to Section 19.

The Chairman: The gentleman from Lewis & Clarke moves that the following be added to Section 19 and that subsequent sections be numbered accordingly.

The Clerk read as follows: "The Governor shall have power during the recess of the Legislative Assembly and until thirty days after the commencement of the next session to suspend the State Treasurer from office for gross neglect of duty, for corrupt conduct in office or for any other misfeasance or malfeasance therein. The Governor shall appoint a competent person to discharge the duties of the office during such suspension of the Treasurer; and shall require of the appointee ample bonds for the proper security of the public funds in his possession."

Mr. Clark of Silver Bow: I move to amend the amendment offered by the gentleman from Lewis and Clarke to read "Board of Examiners, as hereinafter provided, shall have power" &c.

Mr. Maginnis, of Lewis & Clarke. If my friend will permit me—(interrupted).

Mr. Clark, of Silver Bow: I yield to the gentleman.

Mr. Maginnis of Lewis & Clarke: I want to offer as an amendment to the last line of the last section and as a substitute for the amendment of my friend, the following: The Legislature may provide for the temporary suspension of the State Treasurer by the Governor whenever the Board of Examiners deem such action necessary for the protection of the moneys of the State.

Mr. Burleigh of Custer: I move the adoption of that.

The Chairman: The question before the committee is on the adoption of the new section offered by the gentleman from Lewis & Clarke (Mr. Hershfield). The amendment of the other gentleman from Lewis & Clarke (Mr. Maginnis) is not germane at present.

Mr. Rickards, of Silver Bow: Just one word. I do not doubt that this is proper and right, but may it not also be possible that this Board of Examiners may find it necessary to suspend some one else besides the State Treasurer? Should you not in this amendment, or in this section, provide for the suspension of other officers, as well as the State Treasurer?

Mr. Hershfield of Lewis & Clarke. I did not raise that question because I did not think it necessary, for the reason that the State Treasurer is the one that is the most important of all the offices. It is the financial office of the State, and it was for the protection of the finances and the moneys of the State that this amendment was introduced. That is the simple and sole object of that We all expect that we will elect the proper officers, but the temptation exists with the State Treasurer greater than it does with any other officer, and therefore it is simply for that purpose and with that view that this was offered. I think that the more the members take into consideration the wording of that proposition, I think the more favorably they will be impressed with it.'

Mr Knowles of Silver Bow: 'All I would say is, that I hope the bill will not be passed in its present shape. This amendment is intended to cover what they call neglect of duty Now the Treasurer of the Territory may have a great many more duties assigned to him than just simply keeping the moneys of the State, and in relation to all other duties, the courts are open, and an officer can be mandamused by order of the court and compelled to do his duties But this thing of misappropriating money is something that is frequently done, and it is taken out of the money generally that it is supposed will not be called upon for a long time, and in that particular the mandamus will come always too late, and hence it only appertains to the examination and suspension for misappropriation of public money. Now there is a dispute very often between the executive and a subordinate officer as to what his duties are in relation to everything else but keeping money. I have known of disputes between a Governor and an Auditor and a Treasurer in which the Governor was very arbitrary about the matter when the Auditor and Treasurer were right and the Governor wrong. And who is to determine what these duties are? Who is to determine when one of these executive officers has violated his duty? It ought not to be reposed in the Governor; but upon that one thing of whether any man has misappropriated the moneys in the treasury, there cannot be any dispute about that matter. That is a duty in which there will be no trouble in determining whether a man performs his duty or not.

Mr. Bickford of Missoula It seems to me that this is one more step in the direction of legislation, the amendment offered by the gentleman from Lewis & Clarke, and that by allowing or adopting the amendment that we step one step farther into the woods. It seems to me that we are departing from the line of constitutional enactment and encroaching upon the line of legislative duties. It is a well known principle of law that in the Governor of a State is reposed the executive power thereof and I believe in confining the executive power to the Governor and bestowing upon him the right to see to the enforcement of law. If this amendment should prevail it might perhaps be better for us to enact that the Governor should be the State Treasurer at once and have done with it. I would like to ask the gentleman, who is to impeach the Governor, if the Governor is to impeach the Treasurer of the State? Is it not a fact that when a person is elected to the office of Treasurer of the State that he gives a bond to the people of the State conditioned upon the faithful performance of his duty as such Treasurer? Is it not a fact that the legislature takes the matter as we leave it and prescribes the duties, the regulations, and the rules under which he conducts the affairs of his office? Is it not a fact that the State Treasurer, while he is a creation of this constitutional convention becomes immediately amenable to the laws of the State and to the enactments of the Legislature? Is it not a fact that while we create this office the Legislature prescribes the duties thereof? I say that if the Legislature fails in its duty in the matter of prescribing the duties of the State Treasurer, that it will not be the fault of this convention that it does so. I say, sir, that this is a matter which should be left to the future Legislatures of this State· That we ought not to infringe upon their rights in this matter; that we ought not to attempt in this constitution to do more than we are called upon to do I believe that the constitution provides in some place that there shall be elected a State Treasurer whose duties shall be such as are prescribed by law. I believe that it provides that his salary shall be a certain amount. That might well have been left to the Legislature. We should always consider that our enactments in this constitution are something that are to be permanent, something that will be everlasting, something that is not to be lightly changed, and only at a great expense to the people of the future State.

Mr. Whitehill of Deer Lodge: I cannot understand myself what good is to be accomplished by this section even if you pass it. The object apparently is to prevent or to put the Treasurer out of office and to give the Governor the power to suspend him after he has misappropriated money. Now, I do not see that we are to be benefited; after he has misappropriated the money he would be very apt to have skipped out. It is too late then to suspend him from office. Surely, after the harm has been done there is not much need for the Governor suspending him from office. I agree with the gentleman who has last spoken. In every State the Legislature provides that the Treasurer must give bonds for the money, and if he misappropriates this money, the bondsmen are there. There must be some person in addition to the Treasurer liable to the State for the money which he handles, and surely I cannot see that any advantage is to come to the people by legislating in regard to it. So for that reason I am opposed to the passage of this section.

Mr. Marshall of Missoula: In regard to the difference what is proper in the constitution and what ought to be left to the Liegislature, it seems to me that this is a constitutional question. The constitution says that the Treasurer shall be elected by the people for four years: I do not think that the Legislature can pass a law authorizing the Governor to displace him until his time was out, unless the constitution gave him special authority to do so; and it seems to me that if it is proper to make a provision at all that the constitution is the only place where it can be made; that the Legislature can have no authority to say that an officer elected for four years by the people can be displaced for any cause by the Legislature unless the constitution authorizes it especially.

Mr. Maginnis of Lewis & Clarke: I was about to say that, but my friend has said it so much better. I am trying to keep a clear distinction between legislation and constitutional principles, because we are here for the purpose of granting and restricting the powers of the Legislature. Now I offered my amendment providing that the Legislature may pass a law by which the Governor, upon the recommendation of this Board of Examiners, in case he thinks the State moneys are in danger, may suspend this Treasurer temporarily until the Courts, or some one else, straighten the matter up. It seems to me that is clearly a constitutional enactment.

Mr. Clarke, of Silver Bow: I believe in throwing all the safeguard possible around the custody of public funds. Now it is stated by a gentleman here that the State is protected through the bonds that are required. You all well know, gentlemen and Mr. Chairman, that the men who go upon or endorse a bond, or give bonds for these officials get no remuneration from it whatever. The State requires of an official that he shall give ample bonds to protect the State against loss. Now what will this man do—generally a poor man—who is unable to secure any one to go upon his bond to guarantee the State? It is purely a question of friendship as a rule. Now I believe in placing such safeguards round the custody of the public funds as that the State shall not only be protected but that that protection shall extend to these men who voluntarily go upon the bonds of public officials. It is well known that purloining of money begins sometimes in a very small way; a man may get into bad habits; he frequents the gambling table with the hope of winning; his loss may be small in the beginning but it goes on increasing and he puts his hand into the public till to meet his temporary embarrassment; reverses still follow, and he goes on until he absorbs all the funds in his hands, and then is liable to emigrate to Canada. But in the meantime, before he has proceeded very far in the embezzlement of money his acts may be discovered and there may be time to protect the funds of the State and protect these men who have made themselves liable upon his bonds. Hence I am in favor of the provision It is a provision that is not going to tread upon any honest man's toes, and I am in favor of placing such safeguards around our public funds, even if it may partake in some measure of Legislation, as shall effect this purpose in every way. Hence I am in favor of leaving this provision just as it stands.

Mr. Burleigh, of Custer: It seems to me that the remarks of my friend from Silver Bow (Mr. Clark) tend more to the protection of the security than of the State.

Mr. Clark of Silver Bow: That is proper.

Mr. Burleigh, of Custer: Now, if a man is elected by the people to take charge of the public funds, of course there is adequate provision to compel him to give security. If he cannot give the security required by law he cannot fill the office, that is very certain; but to incorporate into this constitution a provision that my friend, Mr. Clark, and Marcus Daly and Mr. Sam Hauser and half dozen others of the wealthiest men of this Territory shall be protected as the sureties of the Territorial or State Treasurer, is something I do not believe in; nor do I believe in putting the Territorial Treasurer, or rather the State Treasurer, in the hands of the Governor, any more than I believe in putting the Governor in the hands of the State Treasurer. It is possible that we may elect a State Treasurer who is dishonest and who may get away with twenty thousand or thirty thousand of our money; but if the law is enforced he is required to execute a bond; the state funds are safe, and I do not think there is any necessity of incorporating that clause in the constitution. Again, there are no persons in the world who look out so closely and see that this man does not get into bad habits, does not get to drinking and carousing, as his bondsmen; they look after this fellow and see he doesn't go astray, and I am in favor of making the motion to this effect, that all these amendments be laid on the table or indefinitely postponed.

Mr. Clark, of Silver Bow: Just one word, Mr. Chairman, in answer to the gentleman. I am not in favor of giving any man, as I have stated this evening with regard to the one-man power principle, I am not in favor of placing it in the power of any one man to suspend another from office and disgrace him without cause, but as I understand it the amendment offered by my friend from Lewis & Clarke provides that it shall only be done by the advice of a Board of Examiners, after having been authorized by the Legislative Assembly.

Mr. Rickards, of Silver Bow: It was far from my thought to provoke all this discussion when I raised the inquiry a moment ago when the Chair was about to put the motion. But I believe that the principle underlying or embodied in this amendment is a good one, and I believe it is the province of this constitutional convention to embody it or engraft it, if you please, in this proposition now under consideration. But I raised the point before, and I raise it again, if it be important why not equally important to throw safeguards around some of these other officers? And I want to ask another pertinent question here. Who constitute this board of Public Examiners?

Mr. Clark, of Silver Bow: The Governor, Secretary of State and Attorney General.

Mr. Hershfield, of Lewis & Clarke: I want to reply to the inquiry in relation to why the same safeguards are not thrown around other officers. It is for the reason that the other officers do not handle the state funds. We want to throw safeguards around the state funds. It is a very important reason.

Mr. Richards, of Silver Bow: Since this has taken the form of catechising each other, I beg to ask what are the duties of the state officers?

Mr. Hershfield, of Lewis & Clarke. Oh, well, the question hardly pertains to that. All the officers may be derelict in their duties, but they cannot all get away with the money of the state.

Mr. Richards, of Silver Bow. I hardly know, but it does seem to me that we will get ourselves into a snarl here unless we are careful.

The Chairman: The question is upon the adoption of the section offered by the gentleman from Lewis & Clarke (Mr. Hershfield). The Clerk will read the question again for information.

The Clerk read same.

The Chairman: There is another amendment upon the same subject to be added to the last. The Clerk will read that also.

The Clerk read as follows: The Legislature may provide for the temporary suspension of the State Treasurer by the Governor when the Board of Examiners deem such action necessary for the protection of the moneys of the state.

The Chairman: The question is upon the adoption of the new section offered by the gentleman from Lewis & Clarke (Mr. Hershfield).

The Chair put the question on the said motion and a vote being taken the same was declared lost.

The Chairman: The question now recurs to the amendment offered by the gentleman from Lewis & Clarke (Mr. Maginnis) to be added to section 19.

The Chair put the question.

Mr. Burleigh, of Custer, called for a division.

A division being had the amendment was declared carried.

Mr. Burleigh, of Custer: I move the committee do now rise and report.

Mr. Conrad, of Choteau: Excuse me for one moment. I want to offer another section.

The Chairman: The gentleman from Choteau offers an additional section to be known as section No. 20.

The Clerk read as follows: Section 20. The Governor shall nominate and by and with the consent of the senate appoint a state examiner whose duty shall be to examine the accounts of State Treasurers, Supreme Court Clerks, District Court Clerks and all County Treasurers and such other duties as may be provided by the Legislature. He shall quarterly, as due, during his continuance in office, receive for his services thirty-five hundred dollars per annum and may receive such mileage, in attending to his official duties, as may be prescribed by law.

Mr. Conrad, of Choteau: I move the adoption of the section.

The motion was seconded.

Mr. Burleigh, of Custer: I would like to offer an amendment to that, "until otherwise provided by law."

Mr. Maginnis, of Lewis & Clarke: I think that part of it regarding the salary and duties of the examiner ought to be prescribed by the Legislature and not by the convention. I think it had better not go in here at all.

Mr. Clark, of Silver Bow: I offer an amendment "that the Legislature may provide."

Mr. Maginnis, of Lewis & Clarke: That would properly come within the legislative provision. I am in favor of a state examiner, but I think where it ought to go in the constitution is in the legislative section. "The Legislature may provide for a state examiner, etc." I do not think it belongs to the executive side.

Mr. Conrad, of Choteau: I simply wanted to prescribe his duties.

Mr. Maginnis, of Lewis & Clarke: My friend can prescribe the duties when it comes up in regular order under the head of legislative departments; I will help him to sustain it then.

Mr. Clark, of Silver Bow: I am in favor of the principle, Mr. Chairman, as expressed by the gentleman, but I believe it ought to go under the head of legislative departments.

Mr. Conrad, of Choteau: If that seems to be the sense of the convention, I will withdraw for the present and allow it to go in under the head of legislative departments.

The Chairman: The section is withdrawn.

Mr. Burleigh, of Custer: I now move that the committee do now rise.

Mr. Rickards, of Silver Bow: I would move, Mr. Chairman, that when the committee rise we report this proposition that we have been considering, General File No. 4, Proposition No. 10, back with the recommendation that it do pass.

Motion was seconded.

The Chair put the motion of the gentleman from Silver Bow (Mr. Rickards), and the same was declared carried.

The Chairman: The question now is on the motion of the gentleman from Custer (Mr. Burleigh) that the committee do now arise.

The Chair put the question and the same was declared carried.

IN CONVENTION.

The President in the Chair.

The Convention was called to order

Mr. Collins, of Cascade: The Chairman of the Committee of the Whole made his report.

The President: The Chairman of the Committee of the Whole reports that certain amendments have been considered and adopted, with the recommendation that File No. 4 be now passed as amended. If there be no objection this report will be received and acted upon and the Clerk will proceed to read the amendments.

The Clerk read as follows: Mr. President, your Committee of the Whole, to whom was referred Proposition No. 10, General File No. 4, on executive departments, beg leave to report the same back to the convention with the following amendments which the committee recommend be adopted. Your committee would state that in the amendments offered, reference to numbers of lines and sections is to such as appear on the printed bills.

Proposition No 10, General File No. 4, Section 1. Amend second line by inserting "Attorney General" after "Secretary of State."

Section 2, line 4, strike out "no."

Amend Section 4, Proposition No 10, by inserting at the beginning thereof the following, "until otherwise provided by law."

The President We will pass upon the amendment to Section 1 first.

Mr. Maginnis, of Lewis & Clarke: Mr. President, I move that we change the phrasing of that so that it shall read, "the Governor, Secretary of State, State Auditor, Attorney General and Superintendent of Public Instruction until otherwise provided by law."

The motion was seconded.

Mr Collins, of Cascade: The motion was to put it in at the beginning of the section

The Chair put the motion on the amendment to Section 1 and a vote being had the same was declared carried.

The Clerk read as follows: Section 2, line 4, strike out "no."

Mr. Collins, of Cascade I move the adoption of the amendment.

The motion was seconded.

The Chair put the motion and a vote being had the same was declared carried.

The Clerk read as follows: Amend Section 4, Proposition No. 10, by inserting at the beginning thereof the following, "until otherwise provided by law."

Mr Maginnis, of Lewis & Clarke. I move that instead of placing those words at the beginning that they shall come in after the words "Superintendent of Public Instruction."

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Maginnis).

A division was called for and the same was declared carried.

Mr Mayger, of Lewis & Clarke: I move that in the third line of Section 4 the word "five" be stricken out and the word "four" put in its place.

The President: If the gentleman will wait a moment the convention will act upon any amendments that were had in Committee of the Whole.

The Clerk read as follows: Section 4, line 14, strike out "regent of the State University" and insert "members of the State Board of Education."

The President: What is the pleasure of the convention?

Mr. Maginnis, of Lewis & Clarke: There is another amendment to that section "and the salary of no official shall be increased during his term of office."

The Chair put the question on the amendment to insert "members of the State Board of Education" in place of "regents of the State University," and a vote being had the same was declared carried.

The Clerk read as follows. In line 10, add after the word "office" the words "and the salary of no official shall be increased during his term of office."

Mr. Loud, of Custer, moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer (Mr. Loud) and a vote being had the same was declared carried.

The Clerk read as follows: Line 12, Section 10, strike out "either" and insert "anyone."

Mr. Buford, of Madison, moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Madison (Mr. Buford) and a vote being taken the same was declared carried.

The Clerk read as follows: Line 15, Section 4, strike out all of proviso.

The President: The amendment strikes out all after the word "office" in line 15. What is the pleasure of the convention?

Mr. Chessman, of Lewis & Clarke, moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Chessman) and the same was declared carried.

The President: These are all of the amendments proposed by the Committee of the Whole.

Mr. Mayger, of Lewis & Clarke: I move to strike out the word "five" in line three of Section 4 and insert the word "four."

The motion was seconded.

The Chair put the question on the motoion of the gentleman from Lewis & Clarke (Mr. Mayger) and the same was declared lost by a vote of 27 in the affirmative to 27 in the negative.

Mr. Collins, of Cascade: I move to amend by inserting "twenty-five hundred" instead of "four thousand."

The motion was seconded.

Mr. Hershfield, of Lewis & Clarke: I move an amendment if it is in order.

The President: There are two amendments pending.

Mr. Collins, of Cascade: I think in the first place that the office of Governor is more of an ornament than anything else. The duties are less than that of any other officer mentioned in this section, and the compensation should be in accordance with the duties performed. The Secretary of State, State Auditor, State Treasurer, or Superintendent of Public Instruction, either one of them, do a great deal more work—two or three times more work, and some of them ten times more work—than the Legislative Assembly will ever impose upon the Governor. The Governor need not remain at the Capitol but during periods when official duties are to be performed. The routine duties of his office can be performed by his private secretary, and I believe that the Governor of the new state of Montana for the present should receive but a nominal salary. When the time comes when we can afford to pay a Governor a bigger salary the Legislature can so provide; but for the present the Governor of our state should not receive more than twenty-five hundred dollars. Gentlemen may say that this is not in accordance with the honor of the office, but I say that the amount of compensation should be in accordance with the duties performed. The man who will hereafter be elected by the people of this great state as Governor will be a man who can afford to fill the position for that sum of money and who will lose nothing by it; and so far as the pay is concerned he can well afford to fill it for that sum as he can for twice or three times that sum. So that we should come down to a straight business proposition and only pay him for the service that he does. There should be no ornament placed around it, and there should be no money paid for the honor of the position. It is almost a sinecure anyhow, and you can wipe it out of existence and not do the state any harm. It is like a great many other things that come down to us from the misty past. We have got it and we will hold on to it but we should only pay for the services that are done.

Mr. Maginnis, of Lewis & Clarke: I think the gist of the gentleman's argument was, in the remark he made, that those who are elected to the office of Governor of the state of Montana can as well afford to perform the duties for the sum he mentions as for any other sum. That simply means that nobody but a rich man shall be elected Governor of the state of Montana, and I do not believe that this convention or the people of this Territory want to put a clause in our constitution or want to fix the compensation of this office at such a sum as that it shall make the office necessarily go to some rich man—go to some man to whom, as the gentleman says, it shall not matter to him whether the salary is twenty-five hundred or any other sum. The office of the Governor of the state is the office of the greatest dignity. The Governor represents the state. He ought to be able to entertain and show courtesies to those who come to visit our state and our state capitol. Besides the duties performed by a territorial governor, we, by this constitution, impose very many other duties upon him. It seemed to be the sense of the committee this afternoon that the matter should be left as it is, and while I am willing that the gentleman should move an aye and nay vote upon this, I think it ought to be a fair record and while all the members are present. I believe that is only justice and courtesy. I think that the salary as fixed by the committee which drafted the proposition and as fixed by the Committee of the Whole is about right.

Mr. Burleigh, of Custer: I agree with my friend from Lewis & Clarke County, as I usually do, except that he has not gone far enough. Now, I do not believe that the salary should be fixed so low that none but a rich man can occupy the position. That it is a good deal of a sinecure I will admit, but I will admit that it is a stepping stone to something higher, for instance, to the Senate of the United States or to some other high office, and I think the Governor should have sufficient salary here in the state to enable him to live as a gentleman; to provide all the necessaries for the entertainment of the members of the Legislature as well as the foreign ambassadors. It is very certain that no man can run the office of Governor and take care of his own interests—especially his own political interests—unless he has a salary of ten thousand, and when the time comes, I shall make a motion to that effect.

Mr. Rickards, of Silver Bow: I am sure that I made myself understood this afternoon when this matter was up for consideration in the Committee of the Whole, but I want to emphasize if I can what Major Maginnis has said, that inasmuch as this matter was decided in the Committee of the Whole it should stand as it as, at least until there is a larger attendance of members. Looking around and seeing the vacant chairs tonight, it seems to me that we are scarcely doing courtesy to the absent members. Of course, you will say that the members ought to be here. I grant that, but it may not have been understood that this matter was to come up for final consideration tonight. Now, touching the remark that my friend from Cascade made, if I understand him correctly, he made the argument or advanced the idea that the private secretary of the Governor could discharge the duties of the office, and that it was not really necessary for the Governor to reside at the capitol. I think it is provided somewhere in this proposition that the Governor when elected to his office must reside at the capital of the state. All of these officers must reside at the capital except the Lieutenant-Governor—the Governor must live at the capital, he must necessarily give up his home wherever he may be. He will be called upon and ought to be able, as Major Maginnis has said, to entertain in a manner befitting his position. I will repeat that he will have to entertain and I believe that he should be in a position to entertain; and I want to say again, as I said this afternoon, that I think the people of Montana are not ready to say that we want any schedule of salaries of these officers to fit only the wealthy men of the state I want to feel and I do feel in this matter as in every other matter that comes up here for final settlement that we are adopting the constitution here which we shall offer to the people for their support and which we shall ask them to affirm by their vote, which affirmation shall be an endorsement of what we have done here, and I take the broad view, the broad ground that we want in a schedule of salaries of all state officers to see that they are open to every ambitious man whether he be a poor man or a rich man, if he is competent to discharge those duties.

Mr. Warren, of Silver Bow: I move we adjourn.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Warren), and a division being called for, the motion prevailed by a vote of twenty-eight in the affirmative to twenty-six in the negative.

The convention stood adjourned until Tuesday, July 30th, 1889, at 10 o'clock A. M.

TWENTY-FIRST DAY.

Tuesday, July 30th, 1889. Morning Session.

The convention was called to order by the President at 10 o'clock A. M.

The Clerk called the roll.

The President: Mr. Gaylord and Mr. Knippenberg desire to be excused today. If there be no objection these gentlemen will be excused.

The Chaplain offered prayer.

The Clerk read the journal of the previous day.

The President: The convention had under consideration the amendments reported by the Committee of the Whole on Proposition No. 10 which business is now before the convention.

Mr. Maginnis, of Lewis & Clarke: I believe that the ayes and nays were ordered on the amendment of Mr. Collins of Cascade to the amendment of Mr. Mayger of Lewis & Clarke when the convention adjourned.

The President: The Clerk will read the amendments as proposed in the Committee of the Whole.

Mr. Maginnis, of Lewis & Clarke: The amendments of the committee on the section were adopted and additional amendments were under consideration.

Mr. Collins, of Cascade: I move to amend Section 4, line three—(interrupted).

The President: The Chair would suggest that the rule is to take up all the amendments reported back by the Committee of the Whole first, and then we can proceed to the consideration of new matters.

Mr. Maginnis, of Lewis & Clarke: I think, Mr. President, the amendments of the Committee of the Whole were all adopted.

The Clerk proceeded to read the amendments reported by the Committee of the Whole.

Mr. Collins, of Cascade: I move that we dispense with the reading of the adopted sections.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Cascade (Mr. Collins), and the same was declared carried.

The Clerk read Section 8, as amended by the Committee of the Whole.

The President: What is the pleasure of the convention concerning the amendment?

Mr. Maginnis, of Lewis & Clarke: I move its adoption.

The motion was seconded.

The President put the question on the motion of the gentleman from Lewis & Clarke (Mr. Maginnis), and the same was declared carried.

The Clerk read as follows: Amend Section 10, line four, by striking out one of the words "he."

The President: If there be no objection, this amendment will be considered adopted.

The Clerk read as follows: Amend Section 11 by striking out the word "present" and insert "elected to that house."

Mr. Maginnis, of Lewis & Clarke: That amendment was lost.

The President: Yes, that was the amendment offered by the gentleman from Deer Lodge (Mr. Winston) which was lost.

The Clerk read as follows: Amend line nine by striking out "noes" and inserting "nays."

This being merely a correction in the phraseology, if there is no objection it will be adopted.

The Clerk read as follows: Amend Section 19 by adding the following words "the Legislature may provide for the temporary suspension of the State Treasurer by the Governor when the Board of Examiners deem such action necessary for the protection of the moneys of the state."

Mr. Hartman, of Gallatin: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Gallatin (Mr. Hartman) and a vote being taken the same was declared carried.

The President: That comprises all of the amendments reported by the Committee of the Whole.

Mr. Burleigh, of Custer: I move, Mr. President, that on line fourteen of Section 11 the word "fifteen" be stricken out and the word "ten" be inserted, so that it shall read "no bill shall become a law after ten days after the adjournment of the Legislature."

The President: I think it is proper to take this proposition up section by section so that the amendments shall come in their regular order. We will consider the amendment offered by the gentleman from Custer (Mr. Burleigh) when we reach that section Are there any amendments to Section one?

Mr. Marshall, of Missoula: I move an amendment to Section 1.

The amendment was sent to the Clerk's desk.

The President· The gentleman from Missoula (Mr. Marshall) offers an amendment to Section 1 as follows: Strike out the following words in lines five and six of the first section "in accordance with the act of Congress known as the 'Enabling Act' approved February 22nd, 1889," and insert the words "when the state shall be admitted into the Union."

Mr. Marshall, of Missoula. It means the same thing but is shorter and more concise.

The motion was seconded.

Mr. Marshall, of Missoula: The section as amended would read "that the first election shall begin when the state is admitted into the Union."

The Chair put the question on the motion of the gentleman from Missoula (Mr. Marshall) and the same was declared carried.

Mr. Collins, of Cascade: I move to amend line three by striking out the word "four" and inserting the word "two," so that the term of office shall be two years instead of four.

The motion was seconded.

Mr. Collins, of Cascade· I do not want to make a talk on the matter, but I wish that my views shall be placed on record. I am in favor of a short term of office for every office in the state, including the office of Governor. If it could be one year it would suit me better than two

The Chair put the question on the motion of the gentleman from Cascade (Mr. Collins) and a division being called for the motion was declared lost.

There being no further amendments to Section 1, the Clerk read Sections 2, 3 and 4.

Mr. Mayger, of Lewis & Clarke: Mr. President, I move to strike out the word "five" in line three of Section 4 and insert the word "four."

The motion was seconded.

Mr. Hershfield, of Lewis & Clarke: I move to amend.

The President. The gentleman from Lewis & Clarke (Mr. Hershfield) offers to amend the amendment offered by the gentleman from Lewis & Clarke (Mr Mayger) by inserting instead of four thousand the words "thirty-five hundred."

The motion was seconded.

The President· The question now is on the amendment offered by the gentleman from Lewis & Clarke (Mr. Mayger), that the word "five" be stricken out and the word "four" be inserted in lieu thereof.

Mr. Marshall, of Missoula, called for the ayes and nays.

The President: If there be no objection the ayes and nays will be called. The vote is on the larger amount first

Mr. Carpenter, of Lews & Clarke: Do I understand that we vote on the larger amount when an amendment is offered? As I understood the rule it was only when a blank was to be filled that it required the larger amount to be put first.

The President: We seem to have been following that rule. I think the opinion of the gentleman from Lewis & Clarke (Mr. Carpenter) is correct, according to Jefferson's Manual; so that being the case we will withhold the amendment offered by the gentleman from Lewis & Clarke (Mr. Mayger) and vote upon Mr. Hershfield's amendment, which is to strike out "four thousand" and insert in lieu thereof "thirty-five hundred."

The Clerk called the roll and the vote stood as follows: Ayes—Burns, A. J., Carpenter, Chessman, Collins, Dixon, Durfee, Dyer, Gillette, Hershfield, Hobson, Joyes,, Kanouse, McAdow, Myers, Parberry, Robinson—16.

Nays—Aiken, Bickford, Breen, Browne, Buford, Burleigh, Burns, A. F.; Burns, Edward; Callaway, Cardwell, Conrad, Cooper, Courtney, Craven, Fields, Gibson, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Hickman, Hogan, Joy, Kennedy, Knowles, Kohrs, Loud, Luce, Maginnis, Marrion, Marshall, Mayger, Mitchell, Muth, Ramsdell, Reek, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, Jos. K.; Toole, J. R.; Warren, Watson, Whitehill, Winston, Witter, Mr. President—51.

Absent—Brazleton, Bullard, Cauby, Eaton, Gaylord, Knippenberg, Middleton, Webster—8.

The Chair declared the amendment of the gentleman from Lewis & Clark (Mr. Hershfield) lost.

The President: The question now is upon the amendment offered by the gentleman from Lewis & Clark (Mr. Mayger).

Mr. Joy, of Park, called for the ayes and nays.

The President: If there be no objection the ayes and nays will be called.

The Clerk called the roll.

The vote stood as follows: Ayes—Breen, Buford, Burns, A. F.; Burns, A. J.; Callaway, Carpenter, Chessman, Collins, Cooper, Courtney, Craven, Dixon, Durfee, Dyer, Fields, Gibson, Goddard, Hartman, Hershfield, Hickman, Hobson, Joyes, Kanouse, Loud, Luce, Marshall, Mayger, McAdow, Myers, Parberry, Robinson, Rotwitt, Watson—33

Nays—Aiken, Bickford, Browne, Burleigh, Burns, E.; Cardwell, Conrad, Gillette, Graves, Hammond, Haskell, Hatch, Hogan, Joy, Kennedy, Knowles, Kohrs, Maginnis, Marrion, Mitchell, Muth, Ramsdell, Reek, Rickards, Sargent, Schmidt, Stapleton, Toole, Jos. K.; Toole, J. R.; Warren, Whitehill, Winston, Witter, Mr. President—34.

Absent—Brazleton, Bullard, Cauby, Eaton, Gaylord, Knippenberg, Middleton, Webster—8.

The President declared the motion of the gentleman from Lewis & Clark (Mr. Mayger) lost.

Mr. Browne, of Choteau, sent up an amendment.

Mr. Goddard, of Yellowstone: I wish to renew the motion which I made in Committee of the Whole by inserting after the first part of Section 4 the words "until otherwise provided by law."

Mr. Maginnis, of Lewis & Clarke: I think that was adopted.

The President: The gentleman from Choteau County (Mr. Browne) offers to amend Section 4 as follows: Lines 4, 5 and 6, "Secretary of State, thirty-five hundred dollars per annum." That is in lieu of three thousand dollars; "Attorney General thirty-five hundred dollars, State Treasurer, thirty-five hundred dollars; State Auditor, thirty-five hundred dollars per annum." The question will be divided. The motion is on the first proposition to amend line four by inserting thirty-five hundred instead of "three thousand." Is there a second to the motion?

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Choteau (Mr. Browne) and the same was declared lost.

The Chair stated the remainder of the motion of the gentleman from Choteau (Mr. Browne) but there being no seconds to the same the said propositions were not put before the convention.

Mr. Hammond, of Jefferson: I move to strike out "two thousand" in line six of Section 4 after the words "Superintendent of Public Instruction" and insert "three thousand."

The motion was seconded.

The Chair stated the motion.

Mr. Warren, of Silver Bow: In connection with this amendment, I would like to say a word. Yesterday the same amendment was offered, and at that time the gentleman from Deer Lodge (Mr. Robinson) took occasion to make some remarks in connection with this matter, stating that the office was one that amounted to but very little and that the officer would have but very little to do. It strikes me, taking the history of the Territory, that the Superintendent of Public Instruction has had equally as much to do as the Attorney General of the Territory, and has come just as near making his salary; and I think he will under our state government come as near making his salary as the Attorney General. It is a very important position and a position that will probably earn three thousand dollars. I am certainly in favor of the amendment. It strikes me in making a distinction in these offices that instead of grading down educational matters that we should rather grade them up.

Mr. Rickards, of Silver Bow: I want to add to what has already been said another consideration. We have already stricken out the latter part of this section providing that the Legislative Assembly might give to these officers certain mileage. Now, if the Superintendent of Public Instructon discharges his duties as it will be expected of him to do he certainly cannot do it on a salary of twenty-five hundred dollars and pay traveling expenses. So I believe that the amendment should prevail. A salary of three thousand is certainly little enough considering the expenses incident to the office and the high order of ability required to fill that office acceptably to the people.

The Chair put the question on the motion of the gentleman from Jefferson County (Mr. Hammond) and a division being called for the same was declared lost by a vote of thirty-two in the affirmative to thirty-four in the negative.

Mr. Warren, of Silver Bow: Mr. President, I move that the salary of the Attorney General be placed at twenty-five hundred dollars.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Warren) and the same was declared lost by a vote of twenty-eight in the affirmative to thirty-six in the negative.

Mr. Hartman, of Gallatin: I desire to offer an amendment to this section to read exactly as the printed proviso reads, except to strike out certain words. It will read this way, "Provided, however, the Legislative Assembly may provide for the payment of mileage to the Superintendent of Public Instruction while traveling in the performance of his public duties."

The motion was seconded.

The Chair put the said question on the motion of the gentleman from Gallatin and a division being called for the same was declared lost by a vote of thirty-one in the affirmative to thirty-four in the negative.

There being no further amendments to Section 4, the Clerk read Sections 5, 6, 7, 8, 9, 10 and 11.

Mr. Burleigh, of Custer: If in order, I would like to renew my motion to amend Section 11, line 14, by striking out the word "fifteen" and inserting the word "ten," so as to make it read "no bill shall become a law at the time of the adjournment of the Legislature unless approved by the Governor within ten days after the adjournment."

The motion was seconded.

Mr. Maginnis, of Lewis & Clarke: We took this from the new constitution of the state of New York which provides thirty days. The committee thought the volume of business in our Territory would not be more than half as large.

Mr. Burleigh, of Custer: I think the Governor would have plenty of time. He has nothing particular to do.

Mr. Hershfield, of Lewis & Clark: I do not think that the amendment offered by the gentleman from Custer County ought to prevail, and I think that if the gentleman himself will think of the matter and take it under due consideration he will not wish it adopted.

The President: The Chair would state that the question is not before the House.

The Chair stated the motion.

Mr. Hershfield, of Lewis & Clarke: I just want to say that there are very many matters that accumulate on the desk of the executive of a new state and certainly the time will be too short to give the matters due and proper consideration. I hardly think that my friend from Custer will insist upon that amendment. I think that fifteen days is short enough.

Mr. Burleigh, of Custer: Mr. President, one of the great troubles and difficulties that the people of Montana Territory, and especially of Custer County and the lower counties here, has been in not getting our laws in time to understand what they are before the next Legislature meets and repeals them and enacts others; and it seems to me that the executive, if he happens to be a business man or a banker or a clergyman, can dispense with some of his other business and examine the statutes, and ten days is ample time for the Governor to look over the entire legislation of this Territory and send the laws out to us. It is a very great inconvenience to parties who are subject to the operation of the law to be in doubt as to what the law is, and I think ten days is sufficient time for the Governor to examine all the laws and put his signature to them.

Mr. Ramsdell, of Missoula: I cannot appreciate the infinitesimal advantage which the gentleman seems to think will accrue under his amendment. It seems to me that we will economize in time by standing by the report of the committee, and there is no material advantage to be obtained by this amendment.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Burleigh) and the same was declared lost.

Mr. Whitehill, of Deer Lodge, sent up an amendment.

The President: The gentleman from Deer Lodge offers the following amendment: Amend Section 19, line five, by inserting after the word "law" the following words "they shall count the moneys and securities in the state treasury at least once every month."

The motion was seconded.

The Chair stated the motion.

Mr. Whitehill, of Deer Lodge: My reason for offering that was just this, that there we have added a provision providing that the Governor may remove the Treasurer. I think it is infinitely better to try to keep the money there than it is to remove the man after the money has been taken away.

The Chair put the question on the said motion of the gentleman from Deer Lodge (Mr. Whitehill) and the same was declared lost.

Mr. Maginnis, of Lewis & Clarke: I move the final passage of the file.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, and the same was declared carried.

Proposition No. 10, General File No. 4, was then placed upon its final passage.

The Clerk called the roll.

The vote stood as follows: Ayes—Aiken, Bickford, Breen, Browne, Buford, Burleigh, Burns, A. F.; Burns, A. J.; Burns, Edward, Callaway, Cardwell, Carpenter, Chessman, Collins, Conrad, Cooper, Courtney, Craven, Dixon, Durfee, Dyer, Field, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Hershfield, Hickman, Hobson, Hogan, Joy, Joyes, Kanouse, Kennedy, Knowles, Kohrs, Loud, Luce, Maginnis, Marrion, Marshall, Mayger, Mitchell, Muth, Myers, Parberry, Ramsdell, Reek, Robinson, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, Jos. K.; Toole, J. R.; Warren, Watson, Whitehill, Winston, Witter, Mr. President—66.

Nays—None.

Absent—Brazleton, Bullard, Cauby, Eaton, Gaylord, Knippenberg, McAdow, Middleton, Webster—9.

The Chair announced the vote.

Proposition No. 10, General File No. 4, as amended, was declared adopted as a part of the constitution of the state of Montana.

Mr. Loud, of Custer: I would like to enquire if Proposition No. 14 comes up under the head of unfinished business?

The President: That is before the convention under the head of unfinished business, having been reported back by the Committee of the Whole. The Clerk will read the amendments reported by the Committee of the Whole.

The Clerk read as follows: Strike out all of Section 2 and insert the following:

Section 2. Every male person of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all general elections; first, he shall be a citizen of the United States; second, he shall have resided in the state one year immediately preceding the election at which he offers to vote, and in the county, town or precinct such time as may be prescribed by law; provided first that no person convicted of a felony shall have a right to vote unless he has been pardoned by the proper pardoning power; provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution; provided that after the expiration of five years from the time of the adoption of this constitution no persons except citizens shall have the right to vote.

Mr. Loud, of Custer: I move the adoption of the amendment.

The motion was seconded.

Mr Joy, of Park: Mr. President, I have an amendment.

Mr. Rickards, of Silver Bow. In view of the fact that there are some members of this convention that I am sure want to go on record when this proposition comes up for final passage, and that they may have an opportunity so to do, I move that it be made a special order for this afternoon at three o'clock

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Rickards) and a vote being had the same was declared lost.

The President. The gentleman from Park (Mr. Joy) moves the following amendment in Section 2, line one, after the word "over' the following words, "who can read and write the English language."

The motion was seconded.

The Chair stated the motion.

Mr. Joy, of Park: I would like to have the ayes and nays called on that amendment.

Mr. Burleigh, of Custer: I would like to have the amendment read.

The Clerk read the amendment.

The President: If there be no objection, the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows: Ayes— Burns, A. J ; Breen, Chessman, Hartman, Joy, Loud, Reek, Sargent, Warren, Witter—10.

Nays—Aiken, Bickford, Browne, Buford, Burleigh, Burns, A. F.; Burns, E.; Callaway, Cardwell, Carpenter, Collins, Conrad, Cooper, Courtney, Craven, Dixon, Durfee, Dyer, Fields, Gibson, Gillette, Goddard, Graves, Haskell, Hatch, Hershfield, Hickman, Hobson, Hogan, Joyes, Kanouse, Kennedy, Knowles, Kohrs, Luce, Maginnis, Marrion, Marshall, Mayger, Mitchell, Muth, Myers, Parberry, Ramsdell, Robinson, Rotwitt, Rickards, Schmidt, Stapleton, Toole, J. K.; Toole, J. R.; Watson, Whitehill, Winston, Mr. President—56.

Absent—Brazleton, Bullard, Cauby, Eaton, Gaylord, Knippenberg, McAdow, Middleton, Webster—9.

The Chair announced the vote and the amendment of the gentleman from Park (Mr Joy) was declared lost.

Mr. Carpenter, of Lewis & Clarke: I wish to offer the following amendment. In the second line of Section 2 strike out "at all general elections" and insert "for all officers that now are or hereafter may be elective by the people, and upon all questions that may be submitted to a vote of the people." I will do that for this reason. The words "general elections" do not cover the ground. There are simply voters at all general elections; there may be special elections and constitutional amendments submitted by the people which may not be provided for by this language.

The President: This is an amendment to the amendment offered by the Committee of the Whole

The motion was seconded.

Mr. Maginnis, of Lewis & Clarke· I move to amend that by simply striking out the word "general" so that it shall read "shall be entitled to vote at all elections"

The motion was seconded.

The Chair stated the motion.

Mr. Carpenter, of Lewis & Clarke: The motion which I offered was to cover all questions that were submitted to the people. It is doubtful whether that would be regarded as an election in the general acceptation of the term. "All officers who are elected and all propositions submitted." This is the language used in constitutions where this question has been fully considered, and these words have been decided to cover the ground entirely.

Mr. Knowles, of Silver Bow: I am a little afraid that in striking out "all general elections" that it might preclude the Legislative Assembly from providing for any question that should go before a municipal corporation—that all persons that are declared electors here might still be or rather would be electors in any muncipal corporation, because I doubt if the Legislature of Montana Territory could organize a government that would make the elective franchise any less than is provided in the constitution. While I think the amendment of the gentleman from Lewis & Clarke (Mr. Carpenter) would still leave it open to the Legislature to say, upon certain questions in municipal corporations, that they might prescribe what the qualifications of an elector should be. I am not sure but that to strike out "general elections" is to strike out "all elections," and that would preclude the Legislature from curtailing the right of suffrage in any corporation. I would like to hear from some of the rest of the members.

The President: The Chair would state that the amendment offered by the gentleman from Lewis & Clarke (Mr. Maginnis) will have to be deferred until the consideration of the amendment offered by Governor Carpenter, as that would be the third amendment.

Mr. Goddard, of Yellowstone: It strikes me that the language used in the section as printed is sufficient for the reason that I do not believe that the constitution should go to the extent of making qualifications for electors at special elections, and for the reason further that the Legislature which provides for special elections always provides for the qualification of the voters at all elections, and so far as municipal matters are concerned the qualifications of the voters at such elections are the creatures of statute or legislative enactment. So that I believe in all special elections the Legislature would have the power and authority to fix the qualifications of the voters, and that the constitution should only be confined to general elections.

Mr. Carpenter, of Lewis & Clarke: I would simply say that .that language does not and has never been construed to prevent the submission of particular questions to a particular class in municipal elections. A vote of the people and a vote of the taxpayers are two different things. It does not prevent any questions being submitted to them.

The Chair put the said question on the motion of the gentleman from Lewis & Clarke (Governor Carpenter) and a division being called for the same was declared lost by a vote of twenty-one in the affirmative to twenty-seven in the negative.

The President: The question now is upon the amendment offered by the gentleman from Lewis & Clarke, Major Maginnis.

Mr. Winston, of Deer Lodge: Is another amendment in order?

The President: Not at the present time.

Mr. Collins, of Cascade: I hope for the reason that the other amendment was lost that this will be lost also. The Legislative Assembly should have something to say in the matter of special elections and in the matter of municipal elections. The municipal authorities themselves should have something to say in the matter, and if you strike that word "general" out you tie the Legislature hand and foot and the muncipal authorities hand and foot. So that I believe that the section as it now reads, so far as this particular matter is concerned, is the best.

Mr. Marshall, of Missoula: I am in favor of the proposition of the gentleman because I am opposed to the Legislature in any election fixing the qualifications of voters other than as they are fixed in this constitution. I am opposed to giving the Legislature the power to empower a municipal authority to fix the qualifications of its voters, or to fix the qualifications themselves. I am opposed to leaving it to the Legislature or the municipality to restrict the right of a citizen of the muncipality upon questions that may come up. Although a man might not be a property holder today, he expects to be probably if he is a citizen, and probably will be. He may not be today but he may be tomorrow. I am in favor of the proposition of the gentleman from Lewis & Clark, Major Maginnis.

Mr. Maginnis, of Lewis & Clarke: When the proposition was made to build the Croton Aqueduct into the city of New York years ago all the taxpayers of that city were opposed to it, and that great enterprise was carried through by the vote of the people generally; and that is what built up the city of New York; and I believe with my friend from Missoula (Mr. Marshall) that it is wiser to leave these matters to the whole people. They may make a mistake once in a while but generally they will be correct. Everybody knows more than anybody, and the allseeing eye is the universal eye, and I am in favor of leaving all questions to the masses of the people.

The Chair then put the question on the motion of the gentleman from Lewis & Clarke (Mr. Maginnis) and a vote being taken the same was declared lost.

Mr. Bickford, of Missoula: I offer an amendment.

The President: The gentleman from Missoula offers the following amendment: Add to the end of Section 2 the following words "Provided further the Legislature shall have power to confer upon women the rights and privileges of electors to vote in any or all elections."

The motion was seconded.

The Chairman stated the question.

Mr. Collins, of Cascade. I would like to make the vote upon this amendment a special order for this afternoon at three o'clock, and I will make that motion. There are three or four members of the convention absent who will vote for this proposition, I believe, and I think the convention should allow those persons to be present to vote upon it. They are absent on leave and will be back this afternoon.

The motion of the gentleman from Cascade was seconded.

The Chair put the said motion of the gentleman from Cascade (Mr. Collins) that the consideration of the amendment of the gentleman from Missoula (Mr. Bickford) be postponed until three o'clock P. M. and a division being had the same was declared lost.

The President: The question is now upon the motion offered by the gentleman from Missoula, Mr. Bickford.

The Clerk reread the said amendment.

Mr. Rickards of Silver Bow: I do not propose to take up but a moment or two of our valuable time on the consideration of this amendment. I for one hope that we will not again enter into a prolonged discussion on the merits of the proposition as to whether the rights of suffrage shall be extended to women. The amendment offered by my friend, Mr. Bickford from Missoula, is a very plain one. The proposition is a very plain one. It is simply this, shall the legislature have the same power to grant to women the right to vote that they have had ever since we have been a territory under the Organic Act. When the matter was up for consideration before I made this statement, and I make it again, that the legislature having had that power has never abused it; they have never attempted to force, I believe, this question on the people, and I predict that they never will until it has become an open issue and a majority of the State legislature has been elected on that issue. Now the question has been asked me why are you not willing to submit this to a vote of the people? I answer very briefly, simply for the reason that if I read history aright, if I read the signs of the times aright, every proposition that has for its object the elevation of society, the uplifting of man, always has arrayed against that movement the saloon element, and the vicious element of every state and of every community, and I predict that if this could be submitted to our people, our experience would not be unlike that of the experience of other states on this or any other question of a like character. I am satisfied in my own mind that if this question should be submitted, that there is not a saloon within the bounds of Montana but that would be arrayed against it, and for that reason I am not willing to leave it solely in the hands of the people. I believe, Mr. President, that it is safe to leave this right where this amendment proposes to leave it, in the hands of the legislature, and believing as I do that no state legislature will ever abuse that trust, will never force this issue upon the people until the people force it upon themselves—if I may use that expression, —I am content to vote for the amendment and hope it will prevail.

Mr. Craven of Lewis & Clarke: I move the previous question.

The motion was seconded.

The Chair stated the motion.

Mr. Knowles, of Silver Bow: I would like to have a word to say. I was absent the other day when this discussion was up.

Mr. Burleigh of Custer: I believe I was recognized before the demand for the previous question was made, and I think I have a right to be heard.

The President The Chair is of the opinion that the gentleman from Custer, Mr. Burleigh, has the floor.

Mr. Burleigh of Custer: I desire to say in support of that the gentleman from Silver Bow has said, that I think this question should be left with the legislature. I do not believe that this constitutional convention is so wise as to look into the future and to mould the course of legislation through all coming time and I do not believe that any fair minded man here, any man who is in favor of human progress, who is in favor of moral development, and moral culture, in favor of elevating the condition of our fellow men, will undertake to force the action of future legislation and make it impossible for them to ever provide that a female shall vote. I know full well that there are men who when they get an advantage, no matter how unholy it may be, for fear that the benign influences of christianity or civilization may dispel everything that they rely upon for their barbarity, cling to that advantage regardless of costs or consequences. I for one am not of that class and I do not believe that it is wise for men to get up, because they may have the numerical strength to-day to close as it were the gates of mercy against the appeals of mankind. It shows a disposition that is not commendable; it shows a species of character that is not to be admired, and it portends evil instead of good to the future. I think it well to leave to the people this momentous question without undertaking to weight it down so that it can never rise again. I believe in leaving the matter just as the gentleman from Silver Bow said, to future legislatures, relying upon the change of circumstances the surroundings and the intelligence of those who are to come after us to mould this thing without puttng the seal and signet of death upon it, for that is just what this means.

Mr. Callaway of Madison: This matter has been thoroughly discussed in Committee of the Whole. As was remarked the other day, I have studied this question for a good many years, and I am rather favorable to the proposition of woman suffrage; but I am a conservative man and perhaps somewhat of a fogy. Perhaps I am not up with the times, but I do not want to see anything put in this constitution that is liable to endanger it. I believe sincerely that if this provision goes in you will endanger the adoption of the constitution. Therefore, Mr. President, I have prepared a proposition which I desire to submit at the proper time, and for the information of the convention I will read it. "Resolved that the Committee on Ordinance is hereby directed to incorporate as a part of the article on ordinance the following provision. There is hereby submitted to the qualified electors, the following as a separate provision, and if it receives a majority of all the votes cast at the election for the adoption of this constitution, then such provision shall form and constitute a part of this constitution. The form of the vote of those who may vote for such provision shall be "For woman suffrage", the form of the vote of those who may vote against such provision shall be "Against woman suffrage". This is the article. "Article—Woman Suffrage. Section 1. The legislative assembly shall have the power to grant to all female citizens of the State over the age of twenty-one years the right to vote at all elections". If it be the sense of the people of Montana that woman shall take her part at the polls with the men, they can vote upon this proposition and adopt it. Now, Mr. President, I have not the want of confidence in the solid people of Montana even taking in the saloon element, that the honorable gentleman from Silver Bow has. Sometimes the people make mistakes, but if they do make mistakes, they, after awhile, right themselves. If we submit this proposition separately it can be voted upon in that way, and if it receives a majority of all the votes cast, then it forms a part of the constitution. And, Mr President and gentlemen of this convention, this is a very common proceeding. In most of the States propositions that are in doubt have been submitted so as not to endanger the great body of the work of the convention. I hope that we are not here to do vain things. I do not know that I would be entitled to my pay, as small as it is, if I allowed my own conscience and my own sentiments and my ideas of right to say, you have gone there you have kept your mouth closed, and been silent upon those things that you have allowed to be done. Therefore the only and serious objection I have to this matter is that it might imperil the adoption of this constitution. I know that the Enabling Act provides that if the constitution we shall vote upon shall be voted down this convention shall be called together again I do not believe that any such event will happen, because I am satisfied from the deliberation, from the care, from the industry, from the patriotism that you see demonstrated in this convention every day that the people will approve it. Now if these gentlemen who are so anxious about this thing will submit it separately we can take the sense of the people, and, Mr President, allow me to say this, there is, in favor of this proposition for woman suffrage, a very considerable following, and it is a very respectable one. It includes the very best minds of the men and women in the Territory of Montana. I laid down the other day my objections to this proposition. I am willing and would vote for, and I say it in all sincerity and honesty, I would vote for the right of the women, of my wife, to go to the polls with me or go by herself and cast her vote as she pleases, for I will say as I said the other day, that I believe that she would be nearer right in the majority of instances than I would, but I do object, and for that reason I would vote against this proposition that she should be liable to all these duties that men have to perform. As was well said the other day by the gentleman from Lewis & Clarke, Major Maginnis, this is a government of force. We should not take too many steps in advance. I am very much inclined to fall back upon the proposition that our fathers laid down over one hundred years ago in the adoption of the constitution of the United States, but, Mr President, at the proper time and when it is germane to the subject, I desire to offer this vote for it as a separate proposition to be submitted to the electors of Montana.

Mr. Ramsdell of Missoula I move the previous question.

The President: The gentleman from Silver Bow has the floor

Mr. Ramsdell of Missoula: I will withdraw my motion to hear the gentleman from Silver Bow, as I believe he has not had his say.

Mr. Knowles of Silver Bow. I was away on professional business the other day when this matter was discussed in Committee of the Whole. In regard to the condition of women and the estimate in which women are held, mankind has made a wonderful progress since the dawn of history The first we know of women they were slaves, sold and bartered in the market like animals. Jacob had to labor to purchase his wives. In later times amongst the Mohammedans woman is the slave and the plaything of man. She has no soul, no immortality is opened up for her, the black eyed eyrie is to be a solace in the heaven to come. Amongst the Greeks and the Romans the woman was under the domination of the oldest one of her clan or sect. She could not marry except as he dictated Later in the middle ages she, her property, everything was subject to the domination of man. Who she should marry and what she should do was all under the domination of man. When she inherited property it was put in the hands of a guardian and the guardian dictated who was to be her husband; he pointed out some stalwart soldier or knight if he had much estate that was to be her lord and master. We inherited from our ancestors very much of the feudal laws. Under our system all of the personal property of the woman when she married went to the husband, and the income of all her real estate except such as was deeded to somebody in trust for her. She was under coveture, under the domination of her husband. Gradually we have been relaxing these old laws. Women originally were not considered fit to be educated, and the literature of the world was not written for woman's eyes. Even Shakespeare was written in an age when but very few women could read, and the foul allusions and the smut that has characterized that poet show the lack of woman readers. But women have become educated. They have purified the literature of the world. We have given woman more and more control of her property. In Montana Territory by this constitution we have said that the property of every woman that she has before marriage is her sole and separate property. What does that mean? That she has the right to control that property; its income is hers. She can dispose of it and do with it what she pleases. After marriage you have put in here a clause relating to community property. She has an equal right with her husband. In this country in the last thirty years educational institution after educational institution has been opened to woman. It was only thirty-five years ago when the first colleges in the United States admitted women to an equal right with men in the college course. And what has been the result? Have women been found lacking in this particular? Those women have pressed forward and taken their rank as some of the best scholars in the land, even in some of the colleges women have taken the prizes as mtahematicians, and they have nowhere fallen behind; nowhere have they shown lack of capacity to take as high an educational course as their brother. It has been said that this is a government of force. I know in looking to the past, governments are governments of force. Russia today is supported by its army; Prussia is supported by her army; Ireland is only kept in subjection to England by the red coats in arms. I know those things, but the constitution of the United States was not adopted by force. Men made and proposed a constitution to the people of this country and it was adopted in peaceable election. This constitution that we establish here today will be adopted in the same manner. Already instead of the arbitrament of force between nations we have a large class of intelligent citizens in this and other countries who are seeking to establish forces which shall arbitrate questions between nations so as to do away with war; to do away with this great question of force and to submit everywhere to the question of reason, to the question of whether it is right or wrong; and I hope that the day is coming when the question of force will be done away with; when it will be said that government is not maintained by force but by the will of the people; that it is not maintained by bayonets but by the question of what is right and proper; and the people are to decide that by their voices, allowing the majority to control. While women advance in education in this country they have advanced in employments also. But a few years ago a woman was considered after she became of age only fit to sit in the parlor and wait for somebody to come and select her for a wife; but now in the cities, nearly one-half of the clerical force is composed of women, and in such large mercantile establishments as that of Marshall, Field & Co. of Chicago, something over one-half of the clerical force are women, and they bear testimony that in every business they equal their brothers in every particular and are not as dissipated and not as liable to be false to their trusts. In the field of literature women are contributing every day. They are writing as many books that are acceptable to the public as men. In the professions, in the city of Chicago three years ago there were thirty women who were regular practitioners of medicine, regular graduates of the best medical schools of the country. I remember years ago when there could not be a woman admitted into a medical school in the United States, and of those that studied medicine and were really fully qualified to practice, there was not a regular physician that would consult with one of them. I happened to meet one of those ladies, who was a physician in Chicago and I asked her how it was now, and she said that there was no trouble upon that point, that the regular physicians consulted with them the same as they did with their male brethren. In several of the cities there are women who are practicing law and practicing it acceptably; there are women who are conducting business and conducting it on business principles and have an honorable business reputation. In the fields of charity, why take in the mother church, the Catholic Church of this country, and four-fifths, if not nine-tenths, of all the charitable and educational institutions of that church are in the hands of women; I believe nine-tenths of them, of the educational and charitable institutions are in the hands of women. Take in the other churches of the country. Why, here the other day I saw one of the most conservative of religious denominations in the United States, the.............. Community brethren had ordained a woman as a preacher. You have had here in Montana Territory in the last few months a woman that has been preaching most acceptably to certain congregations and there has been no cry raised by men as there used to be of old, who quote from St. Paul that women must not be allowed to speak in the church. Men and women have listened to her words. Why, in the political arena in the last campaign Anna Dickinson was employed by the Republican Central Committee of New York in the interest of the Republican party to canvass that State, and no speaker throughout the land had larger audiences to listen to her words than she had. That was in the arena of politics she appeared and not as a woman's rights lecturer. A poor girl, a street sweeper in Philadelphia, rises up and becomes the teacher of men in the world of politics. In the common school systems of the country four-fifths of the teachers are women. I know it was said here yesterday or the day before yesterday that this matter of teaching, the matter of education was a part of the nursery of the country, but the matter of education interests the churches of the land, the matter of education disturbes Bismarck, the matter of education has the consideration of the people of Spain, the matter of education is being agitated in Parliament in England and I tell you that the matter of education is something more than belongs to the nursery. It is a thing that calls for the best and the highest attention and intelligence of thinking men, and yet in this sphere women have almost monopolized that profession. They are teaching and moulding the minds of the young. Now in regard to this matter I know that there are many men in the country who oppose, abuse woman suffrage that are actuated by as knightly principles as ever actuated the knights of old. The thing is they don't want women to be subject to the rough treatment of men. They would sooner, if it was in their power, make for them beautiful homes and place them there as queens, and they may be able to do that with their wives and their daughters and sisters, but how with the great majority? They must do something. Are they to sit still and with folded hands wait for somebody to come and say to them "will you be my wife?" Are you going to let them exercise their energies and take a part in the affairs of life, and if you are, why not in public affairs? Do they lack in sense? I cannot see that they do I do not believe that it will make such a great difference as some men think, or that they will reform the world, I believe that perhaps they will have some influence upon public affairs as they have had upon literary affairs. There may be some tendency to purify public affairs. When men have women constituencies, they will not be boorish and rough in public affairs but will be gentlemen—That was the effect upon the literature of the country, and it may have that effect upon public affairs. But they have property, they have lives that need protection; they have liberty that needs protection, they have a right as men to pursue happiness. They have a right to that property, and the object of all government is to protect property, to protect liberty, to protect life and to protect people in the pursuit of happiness That is the objective government, and that being the objective government why should we not allow them to participate in it? I believe that the women in the United States today upon the average are better educated than the men. There was one matter that I intended to speak of before. In my own community there are some three thousand laborers; they labor from early morning until late at night or from late at night to early morn, and I notice that the women of that community do about all of the business for those laborers They take their checks and they collect their money; they go and buy the supplies for the family; they keep the accounts of the family; they keep the accounts of the money in the bank. Mr. President, you know that yourself, and I believe they do it as well as any man can do it in the country. Now in regard to this matter I do suppose that the people of Montana Territory have not yet advanced to that point where they are willing to say that women may take a part in public matters but the time may come; public sentiment may change upon that matter. The world is moving. Women have gone from the period when they had no souls and were slaves, to where here in Montana Territory they have a right to their own property, they have a right to half of the community property, where they have the same right to education. You have established a college in this community and they have laid the corner stone of it, and you have provided that women shall have the same right to education in that institution that the men have. When you come down to the public institutions of the country, to the college or seminary that will be established by our college fund, are you going to say that women shall not participate in that, that they shall not have the same rights there as the men? If you make them equal in all other things with men then why exclude them from this right of suffrage? As I have said let the world grow. It has grown up to this and it will grow in the future, and in my judgment the time will come when women will be entitled to this privilege all over this land; and I believe in leaving it with the legislature to say when public sentiment is ripe for that matter that they may allow them to do it; to put it in the constitution so that it will take three-fourths of the people to give them that right. Let it be so that it will be simply a majority of the people who will grant them that right. The majority should govern. I have said what I wish to say upon this. I hope that if we do not succeed today that tomorrow we will succeed upon this question. The world grows; it brightens. Religion is changed, politics have changed, and the views of men are changing; and in due time I believe they will change upon this question.

Mr. Joy, of Park: I move you, sir, that we take a recess until two o'clock.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Park (Mr. Joy) and a vote being taken the same was declared carried.

The convention took a recess until two P. M.

Tuesday, July 30th, 1889.

Afternoon Session.

The convention was called to order by the President at two P. M.

The Clerk called the roll.

The President: The convention had under consideration the amendment offered by a gentleman for Missoula (Mr. Bickford) to Section 2 of Proposition No. 14. The question before the convention is upon the adoption of the amendment.

Mr. J. K. Toole of Lewis & Clarke: Mr. President, I expect to vote for this amendment, and perhaps will find no better time for explaining my vote than at this time. The discussion of this question is far advanced and I cannot reasonably hope that my opinion will prevail against the superior judgment of this convention, as expressed in the Committee of the Whole. I must confess that I am one of those who have not found it any easy matter to escape the arguments of those who have urged that the right of suffrage should be conferred upon women. The arguments in the main have been fair and if not convincing have certainly been most interesting and plausible, and yet, with my present information, I would not consent to the proposed enlargement of the political franchise, if I were in the legislature, much less to its establishment as on inexorable principle in the constitution. The reasons for denying it now are manifold and obvious. One reason, however, is controlling with me. We are just launching the ship of state. The primary and paramount consideration with us in admission into the Union. We have long cried and clamored for the supreme hour when we might formulate our fundamental law and be received into the family of states. The hour has arrived, and, in my judgment, it is neither wise nor expedient for us to load down our constitution with this much mooted question. Our work must be first ratified by the people before it has any binding force. We should be circumspect and discreet if we desire it to meet with popular approval. Let us leave the matter with the legislature. Later on we can discuss and provide for this emergency in the legislature, if the demand shall be urgent and circumstances shall require it. It was Edmund Burke, one of the wisest and most thoughtful men that ever lived, who said that statesmanship consisted in the science of circumstances. Circumstances may arise in the future when it will not only be policy but statesmanship to allow those who are interested in good morals, law and order to exercise the ballot; but as I have already observed, I do not think the time has yet arrived in Montana. I yield to no man in my appreciation of woman or the proper estimate of her character and influence upon the world. I am not sure that any enlargement of political privileges would be a personal benefit to woman or elevate her in the esteem of the world. She has always performed her part well. I would have her continue in the future what she has been in the past, the mother and minister of those sublime virtues, charity, hospitality and truth, around whom in poetry and in song the prayer and praise of the good shall ever entwine. (Applause) In her life and history we see a strength and beauty of character that challenges our admiration and stimulates us to a nobler manhood. Memory will ever delight to lift the curtain of material life and view in visions of beauty, Miriam, whom as the pensive and faithful sister of Moses we can see imparting to that famous law-giver that peculiar knowledge of the needs and wants and feelings of woman which characterize his administration. The law which entwines about the children its protecting aegis; that which secured the marriage rite and elevated that ceremonial to the dignity of a religious institution are but scant evidences of the influence of one good woman, so early placed upon perpetual record. Among them have always been found the originators, the projectors and the executors of enterprises to foster and encourage the sublime virtues everywhere extolled and admired, and yet it is fair to say that their paths have not always been "paths of peace," nor have they been free from heartless persecutions The honorable gentleman from Silver Bow who has just taken his seat was pleased to dwell upon the memories of other days when women were circumscribed in their personal rights more than they are today In this I take no delight nor learn a useful lesson. Let us rather turn backward to the dark sward of the past only to pluck the bright characters that lighted up the world with their resplendent lives, and hold them up before the eyes of mankind as examples of the power and influence so majestically and silently wrought by the softer sex. I know that some women are demanding the right to vote and to sit on juries. In this they are not of one accord. I fear that the acquisition of these so-called rights would not bring all the joys they fain would have. A western judge, expounding the fourteenth amendment to the constitution of the United States, who was more learned in the facts of a sad experience than in the law, once said that to "sit on a jury" was not a privilege as contemplated by that amendment, but a burden; and so it might prove concerning these coveted liberties which they so "long have sought and mourned because they found them falling far short of the splendid picture furnished by the mirage of the mind, which so intoxicates the vision of its enthusiastic victories" Possibly there may be in the denial of these demands a bit of selfishness on the part of the sterner sex, but if this be so there is also behind it a love "pure, deep and holy, like a religion." Woman has always been the shield and repose of man In the conflict of life there must be matualities and reciprocities; life-saving stations and harbors of repose. The cares and perplexities of the most even-tempered individual are multitudinous and multiform. There are some dreary deserts, some cloudy canopies, some mountainous regions in every life. To counterbalance and smooth over these asperities and rugged places man naturally turns to woman. It has been truly said that she is the "keystone to his arch of purity and love." The touch of her warm hand lulls the sleeping babe to rest. The glance of her beaming eye thrills the soul of manhood, and in the golden sunlight of old age she clings with undying affection to the object of her love. Pure and patient at the cradle, faithful and enduring at the cross, she is fulfilling the highest duties and obligations of life and scattering deep and broad an influence upon legislation, civilization, order and morals, which, the ballot in her hands, with its consequent association and certain demoralization could never hope to impress." (Applause) In this domain no man of "gentle blood and good breeding" will ever lift a defiant finger. May her course be onward and upward and if the day shall ever come when the manhood of man shall so far depart as to make it necessary to throw upon her the onerous and responsible duties of government, may her voice and vote be as potent for good government as her shining virtue and subdued influence have been in that direction since the dawn of day. (Applause) If that time shall ever come I have every confidence in her ability and integrity to perform the duty. History is not wanting in examples of courage, loyalty and endurance on her part They have led armies, died for the liberties of their countries, suffered the tortures of battle and endured the pangs of hospital experience. Cleopatra, the lovely Egyptian queen, the Maid of Orleans, whose white banner proclaimed victory, Charlotte Corday, the peasant girl who killed a heartless tyrant, and Florence Nightingale, the charity angel of modern times, are niched in historic grandeur, and ages yet unborn will sing the glory of their proud renown. (Applause) The memory of such as these ought to be considered a rich inheritance, a bountiful legacy. It tells what woman can do, but there should be no halting in the march of men. It is his to be brave and chivalrous, it is his to do and dare: it is his to protect and defend; it is his to provide raiment and shelter, food and fuel, for those who in their tenderness and weakness are still more powerful than man can ever expect to be, but if he fails, if he stifles his manhood and degrades the image of his Maker by his improvidence, by the voluntary impairment of his faculties and by the debauchery of his soul, who will say that woman may not be permitted to try the experiment of administering government. "From every hallowed grave where sleep the just" there comes a voice echoing through time which ought to awaken an approving response in every human breast, demanding of men the performance of the sacred duties of taking care of those who are dependent upon them in the family relation. When this obligation is appreciated and observed, then women will not be forced to the front; then and not till then will this great problem cease to be agitated Important as this question is considered by some to be, fortified and sustained as it is by the broad principle that our government is based upon the virtue and intelligence of the people and the consent of the governed, supported and maintained as it is by clear head and generous hearts the world over, I am not quite willing to establish it in this constitution; but I never saw the time when I was unwilling to trust the people of Montana with any problem of government. I am willing that this question, with whatever it has to recommend it, shall go to the Legislature, and consequently to the people. It will then become the subject of general agitation. If it has merit it will and ought to survive; if it has not, it will and ought to perish. Having said this much upon the general proposition, I know of no reason why the Legislature composed of the representatives of the people should have its hands tied and be prohibited from future action if it shall be deemed wise and expedient to make this innovation. We are putting too many prohibitory clauses in this constitution. I have confidence in the people. Upon their wisdom our institutions are builded. When we withdraw that confidence and repose, and hedge in every possible exercise of power by a constitutional prohibtion, then may begin a suppressed struggle of resistence by the people to the constituted authorities which may grow in volume and strength until the combined forces of the state cannot control its mighty efforts for freedom. In deference to this principle and no other I vote for this amendment. It does not concern me at this time whether woman suffrage is right or wrong. It is purely a matter of principle. In conclusion, I hope I may be able to quote a few sentences from a recent address of a distinguished citizen of the south who, while he was speaking upon a different subject, said some things which made a great impression upon me. While I was wondering what possible danger women could be to the republic and why these gloomy forebodings of the future, so graphicaly pictured by some gentleman upon this floor, I came across that address. As near as I can recall it, he said: "The struggle for human rights never goes backward among English-speaking peoples. Our brothers across the sea have fought from despotism to liberty, and in the wisdom of local self-government have planted colonies around the world. This very day, Mr. Gladstone, the wisest man that has lived since your Jefferson died—with the light of another world beating in his face until he seems to have caught the wisdom of the Infinite, and towers half human and half divine from his eminence—this man, turning away from the traditions of his life begs his countrymen to strip the crown of its last usurped authority and lodge it with the people, where it belongs. The trend of the times is with us. The world moves steadily from gloom to brightness. And bending down humbly as Elisha did, and praying that my eyes shall be made to see, I catch a vision of this republic —its mighty forces in balance, and its unspeakable glory falling on all its children—chief among the federation of English-speaking people—plenty streaming from its borders, and light from the mountain tops—working out its misson under God's approving eye, until the dark continents are opened—and the highways of earth are established, and the shadows lifted—and the jargon of the nations stilled and the perplexities of Babel straightened—and under one language, one liberty and one God, all the nations of the world harkening to the American drum beat, and girding up their loins, shall march amid the breaking of the millennial dawn into the paths of righteousness and peace. (Applause)

Mr. Aiken, of Silver Bow: I have always been opposed to woman's suffrage, but I believe I will change my mind, as women sometimes do when they marry men to get rid of them. I shall vote "yes" on this question when it comes up. (Applause)

The President: The question before the convention is upon the amendment offered by a gentleman from Missoula (Mr. Bickford).

Mr. Joy, of Park, asked to have the amendment read.

The Clerk read the same.

Mr. Joy, of Park: I would like to ask if an amendment would be in order?

The President: This is an amendment to an amendment offered by the Committee of the Whole. An amendment will not be in order.

Mr. Conrad, of Choteau: I call for the ayes and nays.

The President: If there be no objection the ayes and nays will be placed upon the journal.

The Clerk called the roll.

Mr. Gibson, of Cascade: I have agreed to pair off with my colleague, Mr. Webster, who is absent from this convention by reason of sickness.

The votes stood as follows: Ayes—Aiken, Bickford, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. J.; Burns, Edward; Cauby, Chessman, Collins, Conrad, Cooper, Fields, Gillette, Goddard, Hatch, Hickman, Hobson, Kanouse, Knowles, Loud, McAdow, Muth, Myers, Parberry, Rickards, Sargent, Toole, Jos. K.; Warren, Watson, Mr. President—33.

Nays—Burns, A. F.; Callaway, Cardwell, Carpenter, Courtney, Craven, Durfee, Dyer, Gaylord, Graves, Hammond, Hartman, Haskell, Hogan, Joy, Joyes, Kennedy, Kohrs, Luce, Maginnis, Marrion, Marshall, Mayger, Mitchell, Ramsdell, Reek, Robinson, Rotwitt, Schmidt, Stapleton, Whitehill, Winston, Witter—33.

Absent—Brazleton, Dixon, Eaton, Hershfield, Knippenberg, Middleton, Toole, J. R.; paired—Gibson, Webster—7.

The Chair announced the vote and declared the motion to adopt the amendment of the gentleman from Missoula (Mr. Bickford) as lost.

Mr. Joy, of Park: I would like to offer an amendment.

The President: The gentleman from Park (Mr. Joy) desires to offer an amendment to add to Section 2 "Provided further that the Legislature is empowered to submit to a vote of the people not oftener than once in four years the question of woman suffrage, and if a majority at any such election shall be in favor of extending the elective franchise to women it shall be so extended."

The motion was seconded.

Mr. Robinson, of Deer Lodge: I think that covers the same ground exactly as the original amendment we voted on. I think it is out of order.

Mr. Joy, of Park: Mr President, in explanation of that amendment which I have offered I simply want to say this, that it has been suggested around here that the Legislature has that power anyhow. That is the very reason that I have offered the amendment in the form that I have. I think it is proper to make some provision to prevent this being submitted to the people at every election that may come up. I don't think it is advisable to do that, and so I have provided in that amendment that it may be submitted to the people not oftener than once in four years. I think that will be as often as the people will want to vote on that proposition. Now, Mr. President, in relation to this proposition we have heard a great deal about it, and I have refrained from saying anything. The members here present ought certainly to be willing that a majority shall rule. With all that has been said about the chivalry of men, etc., I agree, but I say that when the time gets ripe, when this golden hour comes that we have been promised is about to come, when that time comes, when the people of the state of Montana want the women to go to the polls and vote, and when they are willing to indicate it by their ballots, I will be one of those to vote for that proposition, but I venture to say, Mr. President, that at this time there are not five members of this body who have come to this convention instructed in favor of woman's suffrage. I do not think there are five men her who have been advised by their constituents that they are in favor of this proposition, and who asked them to put that question through It will be admitted on all sides that if it was submitted to a vote of the people today it would not be adopted. Now, I am satisfied that this body does not represent the people. The people of the State of Montana or the Territory of Montana are not equally divided on this question. It is liable to be the case in the Legislature. The next one that meets may be nearly equally divided on this proposition, or there may be in fact one or two majority in favor of it. That will not indicate that the time is ripe. It would not be the voice of the people. It is not leaving it to the voice of the people. It is leaving it to a little body of men in the Legislative Assembly, and I am in favor of leaving it with the people wholly, so that they may vote upon it as they see fit. That is the object of that amendment which I have offered, and I trust that it will prevail.

Mr. Rickards, of Silver Bow, asked that the amendment be read.

The Clerk read the amendment.

Mr. Maginnis, of Lewis & Clark: Mr. President, I voted against the amendment just voted down for the same reason that I shall vote against this, because it proposes to take away the decision of this great question, for it is a great question, from the people at any time the Legislature may allow them to vote upon it. I would go back into the arguments pro and con on woman suffrage. I agree with most that has been said by the gentleman from Silver Bow (Mr Knowles) and Lewis & Clarke (Mr. J K. Toole) today except in one particular. I could not especially agree with my friend, or with the gentleman, Judge Knowles, who pictured the millenium as about arriving, and when he was describing that committee of benevolent old gentlemen who proposed to settle all disputes in this world by arbitration, my mind went across the water where I saw the embattled hosts of Germany with Bismarck at their head, the embattled hosts of Russio, France grappling the issues of the hour with her armies, Austria enrolling every man, and every other country in the world enrolling their citizens in such military strength as never was known before in the history of the world. When I contemplated that vision I did not think that the element of force had entirely disappeared from the government of nations; and while he stated that our constitution was peaceably adopted he forgot to state it was only adopted because our fathers fought for eight long years in order that they might win a victory which would make it possible for them to adopt a constitution of their own. And to show that our own country is not different from any other country, to support and maintain that constitution and the Union that was formed under it, we had the bloodiest war that ever ensanguined the pages of the history of this century. Mr. President when you take the silver dollar out of your pocket and look upon it you will not see the dove, the evangel of the millennium which these gentlemen have so beautifully painted; you will see there the eagle, the emblem of the force of the government, and you will see the talon of the eagle, to show that the supremacy of the government is behind that. It is the emblem of your institutions. I am sorry that this is so, but so it is. And, Mr. President, I was opposed to the amendment that was just adopted a few moments ago for the very reasons almost that were given by the advocates of the measure, among them my good friend Mr. Rickards who said he did not want this question submitted to the people because the saloon element would always be against it. Why if those men, whether they keep saloons or not have a right to vote at all, they have a right to vote on all questions. If we have not the right to disfranchise them, we have not the right to circumvent them. Legislatures like conventions are easily moved; a few glib tongues in the lobby, a few smiles from the gallery, or a few bouquets perchance seem to influence members considerably. (Laughter and Applause). But great questions like these should not be settled in a moment either in a legislature or in a convention. They should go to the people of the country. Then it will not be a few men only who on the spur of the moment without proper thought will take these questions up, but they will be discussed in books; they will be discussed in every newspaper; they will be discussed in the pulpits and around every fireside, and the people will go to the polls as they ought to do and settle this question as the people have settled all questions in the interest of humanity. I hope, sir, that my ideas and hopes for the growth of the race are as great as those of anybody, and if the time comes when the people of this country in their wisdom, when this element of force is eliminated from human affairs; if the time comes when men do as they ought to do, live in brotherly love upon this earth; if the confederation of men and the parliaments of the world so beautifully quoted by my friend from the speech of Mr. Grady are ever to be established and intellect and justice and virtue will reign supreme, why then let the people bestow the right of suffrage upon everybody. But I am one of those who believe that so long as there is anything in this world that is worth fighting for, men have to be ready to fight for it; at least that has been the experience of the nations up to this time. But now, Mr President, I am opposed to this resolution because it curtails the power of the legislature. If the people want to vote on this at every election, I say let them do it, and let them decide it the way they want to have it. I am in favor of leaving it to the people of the State of Montana. (Applause).

Mr Rickards of Silver Bow. I hope the amendment will not prevail. We have before us proposition No 18, and in that proposition we have these words "any amendment to this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendment, together with the ayes and nays" and so on Now, Mr. President, my good friend from Yelowstone County ought to be attorney enough to know that this proposition or amendment is in confict with all State constitutions, and that was the reason why the friends of this measure thought it well to leave it in the hands of the legislature I wish to set myself aright on any proposition. I think the eloquent gentleman who has just spoken has put me in a false light—I am not in favor of disfranchising any man or set of men, I made the statement and I reaffirm what I said this morning that on any proposition like this that has for its object the elevating of man, the uplifting of society, has always arrayed against it the saloon element of this or any other country, and for that reason, recognizing the fact that this element generally control, to our shame be it said, more than one-third of this great commonwealth, we wanted it left in the hands of the legislature where it has been. By a vote of this body that amendment did not prevail, and I hope that this amendment offered by Mr. Joy, inasmuch as it will be in conflict with Proposition No 28 which I apprehend we will adopt as a part of the constitution, and will be unconstitutional, will not prevail. He knows and we all know that the proposition could not be submitted by a vote of the legislature and I shall vote against the amendment offered by Mr. Joy. One other word—Mr. Joy said a good deal about the time not being ripe for this. That is evident by the vote taken here already, and while there is no disposition on my part to deal unfarily with anyone, seeing that we attempted to pluck this luscious fruit before it was ripe, I am willing now to submit to a vote of this body, and I move the previous question.

The motion was seconded.

Mr Robinson of Deer Lodge: I gave way to you and now you want to shut me off.

Mr. Rickards of Silver Bow: I beg pardon, I will yield to the gentleman.

Mr. Robinson of Deer Lodge No, sir; you have made two speeches on it already, and you can have the benefit of them.

Mr President: The question is upon the motion of the gentleman from Park.

Mr. Robinson of Deer Lodge I move the call of the house before we proceed to vote upon this question.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Deer Lodge (Mr. Robinson) and a vote being taken the same was declared lost.

The President· The question now is upon the amendment offered by the gentleman from Park

The gentleman from Silver Bow demands a previous question. The question before the convention now is shall the main question be now put.

The Chair then put the said question on the motion of the gentleman from Silver Bow (Mr. Rickards) and a vote being taken the same was declared carried.

The President: The question is now on the amendment offered by the gentleman from Park (Mr. Joy).

The Chair then put the said question on the motion of the gentleman from Park (Mr. Joy) and a vote being taken the same was declared lost.

Mr. Luce of Gallatin sent up an amendment.

The President: The gentleman from Gallatin moves to amend Section 2 by inserting in line two after the word "elections" the following "and at such other elections, and upon such propositions as may be provided for or proposed by the legislative assembly.

The motion was seconded.

Mr. Collins of Cascade: That matter has been considered and voted down.

Mr. Robinson, of Deer Lodge: This proposition seems to me like the killing of a snake; the tail never dies until sunset, and a joint snake, if you kill them they come together again. Propositions like these don't often die until sunset, and it seems that they are trying very hard to get them together again.

Mr. Luce, of Gallatin: The question of snakes is not before the house. There is none in my vote. (Laughter)

The President: The amendment last offered by the gentleman from Gallatin (Mr. Luce) was voted down this morning as offered by the gentleman from Lewis & Clarke as follows: "For all officers that now or hereafter may be elective by the people, and upon all questions that may be subimtted to a vote of the people." The Clerk will now read the amendment of the gentleman from Gallatin.

The Clerk read same.

The President: The Chair is of the opinion that this latter amendment embodies the same proposition as the former. Having been voted upon once the Chair is of the opinion that it cannot be entertained without a reconsideration of the former vote.

Mr. Luce, of Gallatin: I think upon a careful reading of the matter by even my friend who told the snake story it will show that there is some grave error committed here by limiting the vote to those upon whom the franchise has been conferred.

Mr. Robinson, of Deer Lodge: I object to it. I think we have rung the changes on it often enough.

Mr. Marrion, of Missoula, sent up a substitute for Section 2.

The President: The gentleman from Missoula offers a substitute for Section 2 as follows: "Section 2. Every male citizen of the United States and every male citizen of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections by the people. First, he shall have resided in the state one year immediately preceding the election at which he offers to vote. Second, he shall have resided in the county, city or town where he offers to vote at least sixty days immediately preceding the election."

The motion was seconded.

The Chair stated the motion.

Mr. Robinson, of Deer Lodge: I think that is the proposition that has already been passed on by the Committee of the Whole of the house, and I do not think that amendment should go in.

The President: A question passed on by the Committee of the Whole can be considered again in convention.

Mr. Robinson, of Deer Lodge: I think it has been considered in convention.

The President: No sir, I think not.

Mr. Maginnis, of Lewis & Clarke: Mr. President, I call for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows: Ayes—Bickford, Conrad, Hershfield, Kohrs, Luce, Maginnis, Marrion, Marshall, Rotwitt, Toole, J. R.; Winston—11.

Nays—Aiken, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J.; Burns, Edward; Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Cooper, Courtney, Craven, Durfee, Dyer, Field, Gaylord, Gibson, Gillette, Goodard, Graves, Hammond, Hartman, Hatch, Hickman, Hobson, Hogan, Joy, Joyes, Kanouse, Kennedy, Knowles, Loud, Mayger, McAdow, Mitchell, Myers, Muth, Parberry, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, Jos. K.; Warren, Watson, Whitehill, Witter, Mr. President—57.

Absent—Brazleton, Craven, Eaton, Haskell, Knippenberg, Middleton, Webster—7.

The Chair announced the vote and the substitute of the gentleman from Missoula (Mr. Marrion) was declared lost.

Mr. Collins, of Cascade, sent up an amendment.

The President: The gentleman from Cascade (Mr. Collins) offers to amend by striking out all after the word "power" in line six of Section 2.

The motion was seconded

Mr Collins, of Cascade, called for the ayes and nays.

The President: If there be no objection, the ayes and nays will be entered on the journal.

The Clerk called the roll

The vote stood as follows: Ayes—Burns, A. F.; Collins, Parberry, Robinson—4.

Nays—Aiken, Bickford, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. J.; Burns, E.; Callaway, Cardwell, Carpenter, Cauby, Chessman, Conrad, Cooper, Courtney, Craven, Durfee, Dyer, Fields, Gaylord, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Hatch, Hershfield, Hickman, Hobson, Hogan, Joy, Joyes, Kanouse, Kennedy, Knowles, Kohrs, Loud, Luce, Maginnis, Marrion, Marshall, Mayger, McAdow, Mitchell, Muth, Myers, Ramsdell, Reek, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, Jos. K.; Toole, J. R.; Warren, Watson, Whitehill, Winston, Witter, Mr. President—64.

Absent—Brazleton, Dixon, Eaton, Haskell, Knippenberg, Middleton, Webster—7.

The Chair announced the vote on the amendment of the gentleman from Cascade (Mr. Collins) and the same was declared lost.

Mr. Schmidt, of Silver Bow, sent up an amendment which the Clerk read as follows: Strike out in line six, Section 2, the sixth, seventh, eighth. ninth and tenth words.

The motion was seconded.

Mr. Schmidt, of Silver Bow: The section would read after amendment that no person convicted of felony would have the right to vote unless he has been pardoned. The amendment strikes out the words "by the proper pardoning power."

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Schmidt) and division being called for the same was declared carried by a vote of thirty in the affirmative to twenty-three in the negative.

The President: If there are no other amendments to be offered to the section, the amendment of the Committee of the Whole, which is in the form of a substitute, will be adopted, and the substitute stands adopted as a part of the proposition. We will now pass to the other amendments, if any, offered by the Committee of the Whole.

The Clerk read as follows, strike out in line two the word "two" and insert the word "one."

Mr. Collins, of Cascade: I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion and a vote being taken the same was declared carried.

The Clerk read as follows: Strike out all of section nine in the original printed copy.

Mr. Collins, of Cascade: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion and a vote being taken the same was declared carried.

The Clerk read as follows: Amend Section 10 by inserting in line one the words "shall have the power to" and inserting after the word "pass" in the same line the words "a registration and such other" and after the word "laws" in the same line the words "as may be necessary."

Mr. Bickford, of Missoula: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion and a vote being taken the same was declared carried.

The Clerk read as follows: Amend Section 11 by inserting after the word "hold" in the first line the words "The office of County Superintendent of Schools or." Also strike out first seven words of Section 11, "the Legislative Assembly may pass laws allowing" and insert after the word "women" in same line the words "shall be eligible" and strike out the words "the right."

Mr. Rickards, of Silver Bow, asked the reading of the section as amended.

The Clerk read the same.

Mr. Marshall, of Missoula: I want to suggest an amendment to that section. It is not good language to say "The women shall be eligible to vote" and I move to insert the words "and shall have the right to vote."

Mr. McAdow, of Fergus, sent up an amendment.

The President: The gentleman from Fergus offers an amendment as follows: Amend Section 10 by adding the following "and the Legislative Assembly is empowered hereafter to extend the rights of suffrage to all citizens of the United States over twenty-one years of age, without regard to sex, provided that women shall not be liable for military or jury duty, nor shall they be eligible for any office, except that pertaining to schools."

The motion was seconded.

Mr. Robinson, of Deer Lodge: If I understand that correctly it gets right back to the proposition that has been voted down in Committee of the Whole and in this convention enfranchising women for the purpose of general elections. I understand that is the meaning of this amendment. If it is, it is not the proper subject of action by the convention, it is out of order, and under the cover of this one section in regard to the right to hold school office, and to vote at school election reaches back and includes the other—the right to vote generally and at all elections; and if that is the case the proposition is out of order. I desire it to be read again for that purpose.

The Clerk read the amendment as offered by the gentleman from Fergus (Mr. McAdow).

Mr. Robinson, of Deer Lodge: Yes sir, that was just the very proposition that was voted down in this convention.

Mr. Burleigh, of Custer: I think it is another snake. The other half of the snake was the part the gentleman had in his boots; this is the one he had in his hat. (Laughter)

The President: The Chair understands that the proposition embodying the substance of the former amendment as voted down was in reference to referring the matter to the Legislature. This is a direct proposition to extend the right of suffrage to everyone without regard to sex and hence the Chair is of the opinion that it is so different in character as to admit of its being offered as an amendment.

Mr. Winston, of Deer Lodge: I think that was the same proposition that was voted down.

The President: It was voted down in the Committee of the Whole.

Mr. Winston, of Deer Lodge: If the Clerk will read the proposition, I think it is similar.

Mr. Bickford, of Missoula: I desire to explain to the gentleman who interposed this objection that it is not the same proposition nor anywhere near the same proposition.

Mr. Robinson, of Deer Lodge: I desire to suggest this to the Chair that this section as sought to be amended relates to the right of women to hold office in connection with the public schools and to vote at school elections; that this reaching back and extending for general purposes is not germane to the question under consideration and cannot be incorporated in it.

The President: The Chair holds, unless, as the gentleman from Deer Lodge suggests, there has been a previous question voted down which he is not aware of that the amendment offered by the gentleman from Fergus, is an amendment that may be admitted upon this section generally. He holds the point of order raised by the gentleman from Deer Lodge that it is not germane to this section, is well taken; so that the gentleman's proposition will be entertained if he wishes to offer it as a substitute, or as an amendment to the file in some proper place. Are there any other amendments?

Mr. Marshall, of Missoula: I propose, Mr. Chairman, to insert after the word "and" in the second line "shall have the right to." It strikes me that to say women shall be eligible to vote is not altogether proper, and it will read then "women shall be eligible to hold the office of county superintendent of schools in any school district, and have the right to vote at any school district election."

The President: The gentleman from Missoula offers to amend Section 10 by inserting after the word "and" in the second line, the words "shall have the right to."

The motion was seconded.

The Chair put the question on the motion of the gentleman from Missoula (Mr Marshall) and the same was declared carried.

Mr Mayger, of Lewis & Clarke: I have an amendment to Section 10 that I would like to offer.

The President: The gentleman from Lewis & Clarke (Mr. Mayger) offers to amend Section 10 by inserting after the word "of" in line one the words "superintendent of public instruction" instead of "county superintendent of schools."

The motion was seconded.

The Chair stated the motion.

Mr Mayger, of Lewis & Clarke. This amendment is intended to allow a lady to become a candidate for superintendent of public instruction. There are a great many men here who favor the elective franchise for women. I am opposed to that, but I am not opposed to allowing them to take this office when they can fill it as perfectly as some of the men. Therefore, I offer this amendment.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Mayger) and a division being called for the same was declared lost by a vote of 32 in the affirmative to 33 in the negative.

The Clerk called the roll

Mr. Robinson, of Deer Lodge: Mr. Chairman, I desire to amend the section by striking out the words "county superintendent of schools" as they appear in the first line. I will state my reason for it and I think it a very good one.

The motion was seconded

The President· The gentleman's amendment would destroy the sense of the section.

Mr. Robinson, of Deer Lodge: I beg pardon of the convention. I withdraw my amendment I see it reads in a different way.

The President The question now is as to the adoption of Section 10 as amended.

The Chair put the question on the adoption of said Section 10, and the same was declared carried.

The Clerk read as follows. Amend Section 11 by inserting after the word "hold" in the first line the words "the office of county superintendent of schools or." Also strike out all of Sections 12, 13, 14, 15, 16 and 17 and substitute therefor the following section: Sec. 12. Any person qualified to vote at general elections in this state shall be eligible to any office therein, except as otherwise provided in this constitution and subject to such additional qualifications as may be prescrbed by the Legislatve Assembly for city offices and offices hereafter created.

Mr. Hogan, of Silver Bow: I move to strike out that word "person" and insert the word "citizen."

The motion was seconded

The President: The question is upon the motion of the gentleman from Silver Bow (Mr. Hogan) to strike out the word "person" and insert the word "citizen" in line one.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Hogan) and the same was declared lost

The Clerk read as follows. Add to Section 12 the following: "In all elections held by the people under this constitution, the person or persons who shall receive the highest number of legal votes shall be declared elected."

Mr. Rickards: I move its adoption.

The motion was seconded

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Rickards) and the same was declared carried.

The President· This comprises all of the amendments reported by the Committee of the Whole. Are there any other amendments now to be offered to this file?

Mr. McAdow, of Fergus, sent up an additional section

The Clerk read as follows· "Additional section to Proposition No. 14, Section 13. The Legislative Assembly is empowered hereafter to extend the rights of suffrage to all citizens of the United States over 21 years of age, without regard to sex, provided that women shall not be liable for military or jury duty, nor shall they be eligible for any office except that pertaining to schools"

Mr. Robinson, of Deer Lodge: It seems to me that has been voted on, the right of the Legislature to extend suffrage to women. The changes have been rung on it in two or three different ways.

Mr. Bickford, of Missoula: If I understand the objection of the gentleman from Deer Lodge, it is that this is the same proposition voted down by the convention. I wish to submit to the Chair this proposition, that the original amendment offered by myself to Section 2 simply provided for the right of suffrage being extended to women by the Legislature. This is a proposition to extend the right of suffrage to them without restrictions placed upon it. I say, sir, that in view of the fact that it is essentially a different idea from that contained in my amendment to Section 2, that this convention should have a right to vote upon the proposition, whether it is carried or not. It places the question before the convention in a different light than that in which it was placed to my amendment.

Mr. Winston, of Deer Lodge: I think, Mr. President, it contains the same proposition. It says "Shall not serve upon jury or be liable to military duty," if I understand it, and gives them the right to vote. It seems to me that the same proposition was voted down here in the convention.

Mr. Joy, of Park: In view of the fact that this has been before the house and been voted down a number of times, I move that that amendment be laid on the table.

The motion was seconded.

Mr. Burleigh, of Custer, called for the ayes and nays on the motion of the gentleman from Park (Mr. Joy).

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows: Ayes—Aiken, Burns, A. F.; Burns, A. J.; Cardwell, Carpenter, Courtney, Craven, Dixon, Durfee, Dyer, Eaton, Fields. Gibson, Goddard, Graves, Hammond, Hartman, Haskell, Hershfield, Hogan, Joy, Joyes, Kennedy, Kohrs, Luce, Maginnis, Marrion, Marshall, Mayger, Mitchell, Ramsdell, Reek, Robinson, Rotwitt, Schmidt, Stapleton, Winston, Witter—38.

Nays—Bickford, Breen, Browne, Buford, Bullard, Burleigh, Burns, Callaway, Cauby, Chessman, Collins, Conrad, Cooper, Gaylord, Gillette, Hatch, Hickman, Hobson, Kanouse, Knowles, Loud, McAdow, Muth, Myers, Rickards, Sargent, Toole, J. R.; Warren, Watson, Whitehill, Mr. President—31.

Absent: Brazleton, Knippenberg, Middleton, Parberry, J. K. Toole, Webster—6.

The Chair announced the vote and stated that the motion of the gentleman from Park was carried and proposition laid on the table.

The President: There is now an amendment offered by the gentleman from Deer Lodge, Mr. Whitehill, as follows: Amend Proposition No. 14, Section 8, by adding after the word "person" in the first line the following: "Nor any person while confined under sentence of a court for any crime."

The motion was seconded.

The Chair stated the motion.

The Clerk read the section as proposed to be amended as follows: Section 8. "No idiot or insane person shall be entitled to vote at any election in this state; nor any person while confined under sentence of a court for any crime."

Mr. Knowles, of Silver Bow: That would make a man who is simply confined under conviction for a simple misdemeanor, who could not pay $10 00 fine—that would deprive him of the right of suffrage, and I am opposed to it.

Mr. Whitehill, of Deer Lodge: That is just the idea. Confine him in jail and he has not any right to vote whatever.

Mr. Knowles, of Silver Bow: You do not say "confined in jail."

Mr. Whitehill, of Deer Lodge: It reads "Nor while confined under sentence of a court for any crime." If you put in "in jail" it will be superfluous. He ought not to vote while he is in jail; he ought not to vote while he is under sentence.

Mr. Knowles, of Silver Bow: He may take an appeal. A man might be under sentence to pay a fine for assault and battery. Some of us here have rather uncontrollable tempers sometimes that might get us into trouble at some time or another. Under this amendment, a person under sentence might give bonds and still he would be subject to the amendment; he could not vote; he might take an appeal from the district court for assault and battery to the supreme court, and for a year he might not be allowed to vote. You might get considerable men in trouble that way.

Mr. Whitehill, of Deer Lodge: If he is under confinement he cannot vote anyhow, but frequently I have known where sheriffs have taken the jail birds out of jail and attempted to have them vote; and this prevents that officer from exercising any influence in elections, and from taking these people from the jail, those who are confined for little misdemeanors, and taking them down and voting them. I think that a person who is under sentence of a court ought not to be allowed to vote anywhere.

Mr. Carpenter, of Lewis & Clarke: It seems to me that is provided for in the last words of Section 3: "Nor while confined in any public prison."

The Chair put the question on the motion of the gentleman from Deer Lodge (Mr. Whitehill) and a vote being taken the same was declared lost.

The President: That comprises all the amendments so far offered. If there are no further amendments, Proposition No. 14 may be placed upon its final passage.

Mr. Warren, of Silver Bow: I move that Proposition No. 14 be now placed upon its final passage.

The President: If there be no objection, Proposition No. 14 will be placed upon its final passage. The ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows: Ayes: Aiken, Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, Edward; Callaway, Cardwell, Carpenter, Cauby, Chessman, Conrad, Cooper, Courtney, Craven, Dixon, Durfee, Dyer. Eaton, Fields, Gaylord, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Haskell, Hershfield, Hickman, Hobson, Hogan, Joy, Joyes, Kanouse, Kennedy, Knowles, Kohrs, Loud, Luce, Maginnis, Marrion, Marshall, Mayger, McAdow, Mitchell, Parberry, Ramsdell, Reek, Robinson, Rotwitt, Rickards, Schmidt, Stapleton, Warren, Witter, Watson, Whitehill, Winston, Mr. President—61.

Nays—Bickford, Burns, A. J., Collins, Myers, Sargent, Toole, J. R.—6.

Absent: Brazleton, Breen, Hatch, Knippenberg, Middleton, Muth, J. K. Toole, Webster—8.

The President announced the vote.

The President: Proposition No. 14 is adopted as a part of the constitution of the state of Montana to be enrolled and referred to the Committee on Phraseology and Revision.

Mr. Warren, of Silver Bow: I now move you that this convention resolve itself into Committee of the Whole for the consideration of file No. 26, Proposition No. 27, article on Revenues and Taxation.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Warren) and a vote being taken, the same was declared carried.

The President called Mr. J. K. Toole, of Lewis & Clarke, to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. J. K. Toole, of Lewis & Clarke, in the Chair.

The committee was called to order.

The Chairman: The Committee has under consideration Proposition No. 27 Article on Revenue and Taxation.

The Clerk will proceed to read the article section by section.

The Clerk read as follows: Proposition No. 27. Article on Revenue and Taxation Sec. 1. The necessary revenue for the support and maintenance of the state shall be provided by the Legislative Assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxtion of all property, except that specially provided for in this article The Legislative Assembly may also impose a license tax, both upon persons and upon corporations doing business in the state.

Mr. Burleigh, of Custer: It seems to me that this section involves an inconsistency. In the first place, it provides for a uniform system of taxation. That I take it, is upon property. It then goes on to say the Legislature may impose a tax upon both persons and corporations doing business in the state. Now, with the exception of liquor licenses and licenses for gambling, I am opposed to this system of raising revenue by license, for this reason, that it is not uniform. For instance, you take two men who come into the Territory of Montana here with $100,000 each. One man pursues the occupation to which he was educated and he invests his money in a ranch, buildings, horses, cattle and perhaps sheep. He stays there and attends to it himself. He has an advalorum tax assessed on his assets and he pays the tax, perhaps two or three per cent on the dollar. Another man comes in who has been raised to a different occupation. He has a like amount of money. He invests a portion in buildings, a portion in merchandise, a portion in a hotel, perhaps, and other industrial pursuits of that kind, and he is taxed precisely the same as the other man, say two or three per cent on the value of his property, and he pays that tax Well, now, here is the way the system works. If this license system prevails as it prevails at present, while one man pays a tax on his property, that is, what he has, the other man not only pays his tax on his property, but he has to pay a license for the privilege of attending to his business. It is unequal because it required one man to pay taxes upon the property according to its value and the other man to pay the same tax and then taxes his business in addition. It is not republican, it is not democratic, and there should be some system provided by which that should be obviated. I know men in my own and other counties who have brought money in here and invested it in stocks, in farms and in buildings, who are taxed and who pay their taxes. They would come in and put up those improvements, they bring in their stock of goods, and they are not only taxed for the value of the property, but they are compelled to pay a license for the privilege of carrying on the business. It is all wrong,-and I think the matters should be changed in order to make it more uniform.

The Chairman: The Chair has indulged the gentleman from Custer so far, but there is nothing before the committee.

Mr. Burleigh, of Custer: I move to strike out in Section 1, line 5, the words "both upon persons and" so that it will read "The Legislature may also impose a license tax upon corporations doing business in the state."

The motion was seconded.

The Chair stated the motion.

Mr. Rickards, of Silver Bow: I would like to ask this gentleman, though I am of the same opinion as he, if it is not a fact that his amendment does not cover the ground. The Legislature may also impose a license tax if they please but who are the Legislature going to impose the tax on if they do not impose it upon persons and corporations? I think the principle, Mr. Chairman, that the gentleman is aiming at, is just and proper. In the early history of this and other territories, the license system was a necessity, but I think we have outlived the necessity, and I believe that the license system is radically wrong, and I for one am willing to go on record on that proposition. I believe the entire license system is wrong.

Mr. Robinson, of Deer Lodge: I wish to say but a few words and then I will yield to my friend from Deer Lodge, Mr. Toole. If our state government is bound to have so many luxuries, we must have some money to pay for those luxuries, and that should come from the proper source. If we strike out all icense for doing business, it would cut off a very large portion of the revenue of Montana; it would prevent us from licensing saloons, the liquor traffic and everything of that kind. If this amendment were to pass, if I understand it correctly, it would take all license off the shoulders of the business and professional men of the community, and I do not see why all these avocations in life, professional men and men of business, should not help to contribute to the support of the government. If taxes and ad valorum taxes could be made equal, then there would be some reason, but while that cannot be done, I think it nothing but right they should be taxed as always has been done in Montana.

Mr. J. R. Toole, of Deer Lodge: It occurs to me, Mr. Chairman, that if we should agree upon this amendment to strike out those words, which certainly is something I do not believe it is the purpose of this constitution to accomplish, if I understand the amendment, it would leave the Legislature powerless to collect any taxes or any license from saloons, and I am certainly of the opinion, and I think I am not mistaken, that I do not think it is the intention of this convention to do anything of that kind I believe, further, that one of the greatest sources of revenue and one of the easiest collected is license tax imposed upon the business and professional men of the Territory, and I do not think the time has come yet when we can afford to do away with this provision that we have for securing revenue The means of raising revenue sufficient to meet the demands of the new state and the necessary expense that will be incurred in state government is a question that is well worthy of consideration, and while it may be wise some time in the future to abolish this tax, yet my observation of the business of this Territory leads me to the conclusion that the license tax is just and is more readily collected than any other tax My observation is that the class upon which the license tax is levied in this Territory, as a class, are better able to meet the demands upon them in the shape of taxes than any other class of people in the Territory As a rule, the farmers and ranchmen are not as prosperous or as well-to-do as the merchant or saloonkeeper or any other man paying a license tax, and I think there would be a great objection to the ratifying of this constitution if this provision should prevail Certainly, I believe that if we were to make a provision that would relieve saloons from taxation, the constitution of the state would be endangered, for I believe it is the unanimous feeling of the great majority of the people of the Territory that the liquor traffic should pay a good license.

Mr. Hartman, of Gallatin, sent up an amendment.

The Chairman The gentleman from Gallatin offers the following amendment: Insert after the word tax in line 5 of said section the following words: "for the regulation of the sale of intoxicating liquors and other occupations requiring police supervision," and after the word "state" on said line 5, insert "and no license shall be imposed for any other purpose whatever."

Mr. Hartman, of Gallatin I move the adoption of the amendment.

The motion was seconded

The Chair stated the motion.

Mr. Hartman, of Gallatin I just desire to say in support of my amendment that my only purpose was to meet the views of my friend from Deer Lodge, Mr Toole, and that I heartily cuncur in the views he expressed. I am opposed to the license system, but I believe it is necessary for the regulation of the sale of intoxicating liquors and certain other occupations that the Legislative Assembly should have the power to regulate by license those various occupations. The section as amended will read as follows: "The Legislative Assembly may also impose a license tax for the regulation of the sale of intoxicating liquors and other occupations requiring police supervision both upon persons and upon corporations doing business in the state, and no license shall be imposed for any other purpose whatever."

Mr Knowles, of Silver Bow I have some very strong doubts as to whether this would not be in violation of the provision of the constitution of the United States A clause of the constitution of the United States requires that everyone shall be entitled to equal protection of the law. Now, if you select one class of persons for taxation and leave another without taxation, I doubt its constitutionality. I believe that it violates that provision. It does not make an equal protection of the law. I would like to have the gentlemen look that up before they put a provision of that kind in the constitution, discriminating as to persons who shall pay taxes.

Mr. Hartman, of Gallatin I should like to ask the gentleman whether the exercise of police power would interfere with the constitution in that respect

Mr Knowles, of Silver Bow I do not think it would violate the constitution by the exercise of the police powers. It is a police regulation, and while police power extends to anything that will preserve the order or health of the community, you have selected out certain classes of business here for taxation, calling that the exercise of a police power. Carrying on liquor is a business in every form, and I think that we ought to hesitate before passing that amendment

Mr. Burleigh, of Custer. Mr. Chairman, I understand that this system of license originated here at a very early day in the nature of a police regulation Some gentleman on this floor may remember the fact I have a friend who came to this country very early in the settlement of Montana, and he informed me that this license tax has its origin in this way: That they were short of whiskey and short of tobacco, and they organized a sort of police force to levy a contribution on all the wagons and teamsters and the pony freights that were going through here, for the purpose of raising the articles, and they enforced it by very extreme measures sometimes where the people refused to give up; and they found that this system of revenue supplied their wants so far as whiskey was concerned, they found that there were a good many other wants that they wished to have supplied in that way, and it finally ripened into a sort of custom, and custom became law; and what we have here is the result of that system of espionage upon the people. Now, if that is the case, I think it ought to be repealed.

Mr. Robinson, of Deer Lodge: I think the gentleman from Custer understands public finances pretty well.

Mr. Colins, of Cascade: I think we will be safe in leaving this matter to the Legislative Assembly. The taxes collected by license in the state of Vermont pay all of these expenses. Taxes collected by license in the state of Wisconsin pay all of the expenses. There is not a single cent of ad valorum tax collected in Wisconsin to pay the expenses of the state. The great state of Pennsylvania collects nearly eight millions of dollars of indirect taxation, and nearly all of the states of the Union which have made constitutions in the last twenty years or which have changed their constitutions collect a large part of their expenses in indirect taxation. The great state of Ohio at its last session of the Legislature passed by a two-thirds vote, I think, in both houses of its Legislative Assembly, an amendment to the constitution providing that a great share of its revenue may be collected by a license tax, and I have been told by a number of gentlemen from that state that that amendment to the constitution will be voted for and carried by a large majority. Experts upon this matter, who have in late days investigated this taxation question, without a dissenting voice, unanimously so far as I can learn, claim that the less ad valorum tax levied, the better it is for the state. Levy your license tax upon natural monopolies; levy your license tax upon all individuals and corporations who are benefited by the state; levy your license tax upon all individuals and corporations that the state benefits, and you will receive not only in this Territory but in every state of the Union sufficient money to run your state governments the year round. It is not necessary that the Legislative Assembly shall levy a tax upon you or me for doing a grocery business or for doing a wholesale business, or for doing any other kind of legitimate business, and I do not believe the people of Montana will do it; but I do believe that a license tax properly collected and as near equally adjusted as possible will almost pay the running expenses of this state today. We have over two thousand miles of railroad in the Territory; we have seven or eight thousand miles of telegraph lines; we have a number of miles of telephone lines; we have other industries in the Territory which can be taxed under this system, and taxed better than under any other system; and we will be making a move in the wrong direction by striking the authority to levy taxes in this manner out of our constitution.

The Chair put the question on the motion of the gentleman from Gallatin (Mr. Hartman) and a vote being taken, the same was declared lost.

Mr. Burleigh, of Custer: I will withdraw my amendment.

The Chairman: The amendment of the gentleman from Custer (Mr. Burleigh) is withdrawn. The Clerk will read Section 2.

The Clerk read Section 2 as follows:

Sec. 2. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation; and such other property as may be used exclusively for agricultural and horticultural societies, for educational purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity may be exempt from taxation. The Legislative Assembly may, in its discretion, exempt from taxation other property in addition to that herein specified, but all exemptions shall only be by general law.

Mr. Loud, of Custer: I have a substitute that I wish to offer for Sections 2 and 3.

The Chairman: The gentleman from Custer (Mr. Loud) offers the following as a substitute for Section 2 and 3. "All property in the state not exempt under the laws of the United States shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property' as used in this article and section, is hereby declared to include monies, crops, bonds, stocks, dues, franchises, and all other matters and things, real, personal and mixed, capable of private ownership; provided, that growing crops, property used exclusively for public schools, and such as may belong to the United States, this state, or to any county or municipal corporation within this state, and all buildings together with the lands upon which they are located, so long as they are used for places of public worship or for charitable purposes, and do not exceed $25,000 in value; all cemeteries, etc., shall be exempt from taxation.

Mr. Kennedy, of Missoula: I move the adoption of the substitute.

Mr. J. R. Toole of Deer Lodge: I suppose the motive in introducing those two sections was to get at the proposition of taxing mining property. I trust it is not necessary for me to take up much time in discussing this substitute, because there are some very appropriate reasons why it should not prevail. I apprehend, sir, that the gentleman who offered this resolution or this section, and others who may support it, are not perhaps aware of what the condition of the mining interests in this Territory or coming state is or may be. I apprehend that they are not aware, perhaps, that it is an utter impossibility to tax mines and assess them at any value that can be agreed upon by any two persons as to what they are worth. I want to state for the information of the gentleman and others, that my business, so far as I have had a business here, is in that line to a certain extent. I want to state that there are no two men in the same line of business, whether they may be assessors, mining experts or professors of mineralogy, that can come anywhere near agreeing on the value of mining property. Even the world-famed mines, such as the Granite Mountain and the Anaconda, and mines of that class, which perhaps those gentlemen imagine can be assessed upon a proper valuation, I desire to say that I believe it to be a fact that there are no two assessors in this Territory, each one basing a judgment upon his knowledge of those mines, that can come within a million dollars of each other as to what they are worth. There are other phases of this question, too. There are a great many poor men who are making their living in this line of business, and it is a fact that they oftentimes have a property that they may value at $10,000, $20,000 or $50,000, and that might be assessed at that valuation, and nine times out of ten, it is a safe assertion to make, that they are not worth fifty cents. And further than that, there is another and very potent reason, and that is this, that I am satisfied it will defeat this constitution if placed before the people, because the people in the mining counties and people who understand the situation would think it worked a hardship to a large class of people; in fact, the people upon whom the Territory is dependent for its very sustenance. The provision as provided for by the report of this committee is the same that is in force in all the constitutions of the different states where mining is carried on to any extent. In Nevada, Colorado, California and in the state of Dakota; and I want to assert again that there is no question in my mind that if this matter should be incorporated, this section would defeat the ratification of the constitution in this Territory. I trust it will not be necessary for me to go into further details to show up this matter, because I believe it is apparent to the members of this convention who are familiar with mining in all its phases, and who hail from the counties where the mining interests prevail to a great extent. For that reason, I will not take up any more of the time of the convention, believing it is needless for me to do so and believing that this amendment as offered will not be supported by the vote of this convention.

Mr. Loud, of Custer: My object in introducing this was simply this, that on page 220 of the 16th regular session of the Legislative Assembly, a law was passed containing similar provisions to those contained in Sec. 3 of this Proposition No. 27, and as this law will remain in force unless repealed, I cannot see any object or any advantage to be gained by adopting this Sec. 3.

Mr. Hershfield, of Lewis & Clarke: Mr. Chairman, is Sec 3 under discussion?

The Chairman: Sec. 3 is not, but the gentleman from Custer (Mr. Loud) offers a section to be called Sec. 2 which is a substitute for Sections 2 and 3.

The Chair put the question on the motion of the gentleman from Custer (Mr. Loud) and a vote being taken, the same was declared lost.

Mr. Luce, of Gallatin, sent up an amendment.

The Chairman: The gentleman from Gallatin (Mr. Luce) offers the following: Amend Section No. 2 by striking out all of the section after the word "taxation" in line 5.

Mr. Luce, of Gallatin: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Gallatin (Mr. Luce) and a vote being taken the same was declared lost.

There being no further amendments to Sec. 2, the Clerk read Sec. 3 as follows:

Section 3. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal, or other valuable mineral deposits, after patent shall have been issued therefor by the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim, is used for other than mining purposes and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof, so used for other than mining purposes, shall be taxed at its value for such other purposes, as provided by law; and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims shall be taxed as provided by law.

Mr Hartman, of Gallatin: I move to strike out the word "net" in line 9 of that section and insert the word "gross."

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Gallatin (Mr. Hartman) and a vote being taken the same was declared lost.

Mr. Conrad, of Choteau: I wish to offer an amendment to add to Section 3.

The Clerk read the said amendment as follows: "All canals, ditches and water courses constructed for the sole purpose of carrying water for use in mining, irrigating and farming lands," etc.

The motion was seconded.

The Chair stated the motion.

Mr. Maginnis, of Lewis & Clarke: I would like to ask the gentleman if some great corporation should come into the country and build a mining ditch and collect a great revenue from the people for furnishing water, if they would not be subject to taxation under this?

Mr. Conrad, of Choteau: It provides that they shall pay on the net water rental whatever the water rental is.

Mr. Maginnis, of Lewis & Clarke: I was reading lately of an account of the people that owned the ditches that supply the farms in the vicinity of Greeley, Colorado, and the exactions they made upon the farmers there; and of all the species of landlordism and rack-rent in the world, it seemed to me that was the worst. They had a perfect grip upon the people; they charged exorbitant prices for water. I would not be in favor of encouraging corporations of that kind.

Mr. Conrad, of Choteau: I would say, Mr. Chairman, that we have already made the canals and water courses here public property, and they are liable to the control of the Legislature; they can fix their charges; and my idea for introducing this is to get capital to bring out water on the arid lands of Montana. Unless there is some provision of this kind, I do not thnk they would do it. A person could go to work and spend two or three hundred thousand dollars and bring out water, with no settlers at all on the land, and he cannot see any immediate prospect of a return for five or six years; whereas, if it is provided that he will not be taxed on the net water rental, whenever he gets a little, he will commence to pay taxes; and I believe it is as much of a public benefit to get these arid lands covered with water as it is to develop the mines of this Territory.

Mr. Maginnis, of Lewis & Clarke: I would not wish to do anything to discourage capital in any such enterprise, but I hope to see the day come when the systems of irrigation shall be either under the control of the state or of the United States for the purpose of bringing water upon our arid lands; and I understand the Committee on Irrigation has under consideration a memorial to Congress in accordance with the resolution that I introduced, to ask the government of the United States to grant the arid lands, in order that their net revenues may be devoted to the purpose of building canals; and that was to avoid that very thing. Now, we are opposed to landlordism; we don't want any company or any corporation or any individual to own vast tracks of the land on which they may have tenants. But it seems to me that if the companies or individuals or corporations are to own vast water courses, that it would be a species of landlordism of the worst kind, and I do not think that we should favor the principle.

Mr. Collins, of Cascade: Now, I claim, Mr Chairman, that instead of fostering the bringing out of water ditches upon our lands by private corporations and by individuals, we should, if possible, stand out and by all means in our power, unite together to bring that water out, and have it brought out by the state or by the government. If there is a monopoly on earth that is grinding, it is the monopoly of a great corporation that owns the water of an arid country. I believe the constitution of the state of Montana should prohibit it, and I believe that thousands, yea, thousands upon thousands, hereafter will say "God bless the people who framed the constitution of Montana.'" If there is anything on earth that is a curse to a people, it is to allow a corporation or allow a few men to own the country, and you might say, own the people. The instance cited by the gentleman from Lewis & Clarke (Mr. Maginnis) in Colorado is a case in point The valley around Greeley is as fine a country as there is in this western country. A few years ago it was self-supporting, but those water monopolists have got control of every inch of that water. They first commenced by charging such a fee as the farmers and manufacturers could stand; they commenced raising on that, and their profits were increased until today they do as they did twenty years ago, take everything but the bare substance, and that same policy will be in existence in Montana if you allow this thing to go into your constitution.

Mr. Hartman, of Gallatin: I am opposed to the amendment for the same reason, among others, that I was opposed to the word "net" in the previous section "Net water rentals" simply means nothing. A corporation which has within itself and among its officers all of the knowledge as to the transaction of its business will not probably find much "net" water rentals to pay the taxes upon, nor will the mine owners find any "net" proceeds from their mines to pay taxes upon, but that last matter has been settled, and therefore there is no need of introducing it here again But this thing of offering bonuses to corporations for the purpose of digging out canals and water ditches in this Territory is a mistake. If there is any money in that kind of scheme, then they will come in and put it in without offering a bonus. And it seems to me that if we intend to show any favoritism or show any preference here by our acts, let it be towards the citizens of the state, and not towards a foreign corporation, for the purpose of bringing capital in here. I agree with my friend from Cascade, Mr. Collins, that these water courses and water system should be under the control of the state, or under the control of the National Government. For these reasons, I am opposed to the amendment.

Mr. Conrad, of Choteau: Both of these gentlemen that have just preceded me have gone on and said a good deal about these corporations wanting to grind the people with excessive water rates. There was a measure introduced here, I think it has been passed, that water courses, and canals were made public property, and that water rental can be governed by the Legislature, and I do not see what is the use of going on talking about that when it is in the hands of the Legislature to stop them. (Reading) "Water-courses, canals, reservoirs, &c., shall be declared public property."

The Chairman: In the Declaration of Rights they were declared to be a public use.

Mr. Conrad, of Choteau: Well, it is stated here by the legal fraternity that by doing that the water rentals could be controlled by the Legislature.

Mr. Hartman, of Gallatin: I think that is a stretch of construction.

Mr. Luce, of Gallatin: I think there is no occasion to fear outside corporations or outside money constructing canals, any more than constructing railroads in this country. Now, sir, the committee will recollect that there is a proposition—I think it has been adopted by this convention —in the first place, permitting or authorizing the County Commissioners of each county to regulate the tax or rental of water. That is one thing. We have the same law now upon our statute books, that all sale of water is to be regulated by the commissioners of the several counties. The great trouble in this Territory now is not that we have too many water courses, or rather, water course, for the artificial irrigation of our land, but that we have not enough. Some of the most persistent law suits today arise out of the right of priority for the use of water out of some little stream. There never has been any particular litigation that I know of in relation to the waters of a large stream, for instance the waters of the Missouri, the waters of the West Gallatin, or the waters of the Jefferson, nor any of those large streams that are still running downhill and doing nobody any good. Now, if there is any enterprise that I think needs fostering in this Territory, it is that enterprise, which brings out water and reclaims and land that is now desert and worthless for the very want of water. So long as the regulation of the rental or sale of this water is within the disposition of the Legislature, and within the control of the Commissioners of the separate counties, I apprehend there is no danger of oppression to the people. If we could have this same hold upon other corporations, upon the common carriers of this country, we would be less oppressed than we are now. I am strongly in favor of the amendment of the gentleman from Choteau. I think there is no danger to be apprehended so long as the Legislative power of this state has full control of the rents of these waters.

Mr. Conrad, of Choteau: I will say, Mr. Chairman, that if any of these gentlemen are afraid that there will be extortionate water rentals that I will support any measure putting them under the control of the Legislature or County Commissioners. I simply want to encourage bringing out water onto this arid land. We have got sufficient land down in northern Montana to sustain a population of 100,000 people if we had water on the land. We are a little differently situated in Choteau County than my friend from Cascade. He lives in the country where they say it is not desert land, that it does not need irrigation I believe they have got that fixed by the land office. But we live 42 miles below, and we cannot raise anything unless we have irrigation. (Laughter)

Mr. Burleigh, of Custer: I desire to offer a substitute to Section 3.

The Chairman: The gentleman from Custer offers the following substitute for Section 3: Strike out all of Section 3 and substitute the following: The Legislative Assembly shall have authority to pass all necessary laws relating to the subject of taxation.

Mr. Burleigh, of Custer: I move the adoption of the substitute.

The motion was seconded.

Mr. Conrad, of Choteau: I hope that substitute will not prevail. I am as much in favor of fostering this mining interest as I am of the canals. I believe they are both essential to the development of the country. Therefore, I shall oppose the substitution of that section.

Mr. Knowles, of Silver Bow: We have passed a clause in our Bill of Rights, giving the right of way over ditches and canals and over property of other persons, and calling that a public use. That was intended to foster this question of irrigation. Then, in Proposition 26, which has not yet been passed upon, but is before the convention, there is a provision "that the water of every natural stream not heretofore appropriated within the state of Montana is hereby declared to be the property of the public, and the same is dedicated to the use of the state subject to appropriation as hereinafter provided. The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied Priority of appropriation shall give the better right as between those using the water." Then, at the conclusion of that subject upon irrigation, it says, "the General Assembly shall provide by law that the Board of County Commissioners, in their respective counties, shall have power, when application is made to them by either party interested to establish reasonable maximum rates to be charged for the use of the water, whether furnished by individuals or corporations." Now, that is not passed yet, but I presume that it will be; and that this last proposition in connection with others, I believe, as we say, that it is a "good scheme" to provide that these ditches shall be taxed only upon the net income, leaving it to the County Commissioners to provide what rates they shall pay for the use of water, and certainly any one county will not be too liberal to the company; in fact, it would seem to me, under such a provision as that that there would be some doubt whether any of the companies would make six per cent on their investment; and hence I think that it is a good proposition to exempt where we provide that the rates may be regulated by law

I believe it is a good proposition to say that these companies shall be taxed only on the net income from their business.

Mr. Bickford, of Missoula: It seems to me that the amendment offered by the gentleman from Choteau should prevail. We have, at the present time, within the limits of the Territory of Montana, large areas of arid lands, and particularly in the county of Missoula have we such a class of lands. I believe I am safe in saying that there are 75,000 acres of good aridable land within the limits of Missoula County today lying as a barren waste within the limits of the county, returning no taxation, no revenue whatever to the county or to the state, which might, under the provisions, or under the exemptions offered by this amendment, become homes for hundreds of people. It seems to me, sir, that if we desire to have a system of irrigation extended to the different parts of the Territory or the state that we should offer inducements to these people who have money and desire to invest it in this way. In the state of Colorado, while perhaps as extensive a system of irrigation as there is anywhere is at present in use, they have extended some exemptions to the people who have invested their money for the purpose of bringing water upon the arid land. We have at the present time a season so dry that it is going to bring want to many a door in the county of Missoula. The system is imperfect at the present time. It does not extend far enough, and it is only by the investment of large amounts of money in some particular locality that a system of irrigation can be extended so as to be made available to all the people. Now, under the restrictions which have already been passed by this constitutional convention, it seems to me that the rights of the people would be entirely safe—that the rights of people who take water from these companies would be protected entirely, and if the investment did not pay a large amount upon the money invested, at least it would pay a sufficient amount, if exempted from taxation, to warrant these people who have money and desire to invest it in this way, in so doing. We must view this matter from the point of expediency; we must view it from the point of our interests, and if we can by digging an irrigation ditch in any section of the country bring into use a large tract of land by so doing; you add to the taxable property of the state—you make a perpetual fund from which the state draws annually a revenue for the purpose of maintaining the state government. Then, it is simply a means to an end. You create property by exempting one class of property from taxation; you create a taxable class of property by exempting any class from taxation. It seems to me, sir, that the people of this state would be served by exempting such a class of property as this from taxation, if not perpetually, at least for a period of years.

Mr. Burleigh, of Custer: Then, I would suggest that the gentlemen are osition is under consideration?

The Chairman: Section No 3.

Mr. Burleigh of Custer: Then, I would suggest that the gentleman are entirely out of order. It does not relate to irrigation or anything of that kind. It relates to the subject of taxation exclusively.

The Chairman: The gentlemen are speaking of the amendment of the gentleman from Custer. The question is upon the amendment offered by the gentleman from Custer, (Mr. Burleigh,) who offers the following as a substitute for section 3: "The Legislative Assembly shall have authority to pass all laws relating to the subject of taxation."

Mr. Clark of Silver Bow: Mr. Chairman, I am opposed to striking out this section, because I believe that it will endanger, or may endanger, the greatest industry we have in the State of Montana. Now, I stand here today as a representative of the mining interests, and I will venture to say that there is no class of men engaged in any industry in this Rocky Mountain country that has a higher regard for integrity or is more disposed to make a fair and equitable return of their property than are the men engaged in the mining industry. They do not propose to evade any of the duties of citizenship; they never have put themselves in an attitude of attempting to evade any of the responsibilities of citizenship in this Territory; but they do contend that the only way to reach a fair and equitable assessment of their values is to base it upon the net proceeds of their mines, in addition to whatever improvements may be found upon the surface thereof, and, as has been said by the gentleman from Deer Lodge, Mr Toole, there is no method known to metallurgy, mineralogy or geology whereby, considering all the uncertain circumstances that attend this industry, a fair and equitable value can be placed upon the property they call a mine. Today it may seem to be a bonanza, as the Mexicans say, with plenty of ore in sight, but how many are there here—and there are many men on the floor of this convention who are engaged in this industry—who have had in their experience the beautiful hopes of today frustrated by the stroke of the pick tomorrow? I have seen many mines in the Territory of Montana upon which would be placed what seemed to be a fair valuation by experts in mining that would run up into the thousands—I may say hundreds of thousands sometimes—that have within a very short space of time been entirely dissipated and proved to have been entirely incorrect. Look around among us in the experience of mining men, and see how many of them have come to grief and ruin simply because of a mistaken judgment in placing a valuation upon a mine. I tell you that there is another ground for danger. If you allow a mine to be taxed upon what is supposed to be the value of it, you place a weapon in the hands of every assessor in this Territory to levy blackmail upon every man who may have an interest in a mine. We know how sanguine was the spirit of the "Forty-niners." We know how sanguine every man is who may have an interest in this species of property. We know there are men all over this country who, when they have a prospect, a mere hole in the ground, will tell you if you ask them what value they place on that property, that it is worth $10,000, $20,000 or $100,000. The very fact of such declarations as these will induce the assessor when he comes around to place such valuation upon that prospect, the payment of the taxes of which for one year would bankrupt the owner. I say again that the fluctuations of the valuation of these metals are another fact which will disqualify anyone from placing a proper valuation upon mining property. We have seen it only a few years ago that the price of copper was so low that almost all the mines in the Rocky Mountain country were closed down, and if we do not mistake, the indications are that the markets of the world today point to a worse condition of things that is about to visit the mining industry, so far as copper is concerned. We see silver today at 91 cents an ounce. There are a great many silver mines in this Territory, it is true, that are apparently productive, and are enabled to go on. But, while this is the case, there are hundreds of them standing idle because silver is low, that a few years ago were valued at thousands and thousands of dollars.

I believe that the only fair way to arrive at a just basis upon which to tax this species of property is by taxing the net proceeds of these mines; and I say to you, gentlemen, that in the county of Silver Bow, where I have the honor to live, and in the county of Deer Lodge, where the Granite is situated and where there are other great mines, that the revenues derived from this mode of taxation have been entirely satisfactory to many people who heretofore have been opposed to it. There are forms made out for these men engaged in this industry to sign and make affidavits to, and as I have said, these men are men of integrity and honesty, and the assessor's returns in the county of Silver Bow will show that they have made a fair and equitable return upon their property.

Hence, I am in favor of adopting the report of the committee That seems to me to be a just and fair proposition.

Four years ago, when the representatives of the people of this Territory met in this city to frame a constitution, this same subject was discussed. There were men in that convention, men of ability, shrewdness and acquaintance and familiarity with public affairs, who stood upon the floor of that convention and denounced this very measure as an unfair, yea, an infamous proposition. I have talked with these same gentlemen not later than a week ago, and one, a lawyer in this Territory, who is honest and qualified to judge of these things, after having experience with it as he has had since, has stated to me that while in the former constitution he believed it was unjust and unfair, that having seen the workings of the system in this Territory, he was led to the conclusion that it was the only fair and equitable method of arriving at the fair and just taxation of the mining interests of this country.

So, I say to you, gentlemen, to whom it may seem an unfair and unjust discrimination in favor of this industry, that if you will study it as we have done, that you can arrive at no other conclusion than that it is the only method whereby the state can secure from this species of property a reasonable and just revenue, and at the same time protect those men, those brave pioneers who have come out here and have made the wilderness blossom as the rose, and opened up these great mountains and brought their hidden wealth to light, yea, I say, it is the duty of the members of this convention to throw such safeguards around this industry as are proper and just; this great industry that is the foundation of almost all the prosperity of this country;-this industry that has made possible the building of railroads into this country; that has made this city of Helena, of which all Montanans are proud, that has built up the city of Butte and has made all the valleys and mountains of Montana productive.

I say, gentlemen, let us be cautious how we remove anything from the report of this committee that is going to endanger or jeopardize in any way this great enduring industry upon which our greatest hopes are founded.

The Chairman: The question is upon the amendment of the gentleman from Custer.

The Chair put the question on the said motion, and a vote being taken, the same was declared lost.

The Chairman: The question now is upon the amendment offered *by the gentleman from Choteau (Mr. Conrad).*

Mr. Collins, of Cascade: Before that question is put I would like to say another word or two. This species of property and mining property do not stand upon the same basis. The arguments of the gentlemen from Silver Bow and Deer Lodge indicate that. The labors of this committee show it; and there is no one in this convention or in Montana who can prove with any reason that those two species of property are upon the same footing. If we place a certain exemption upon water ditches, if we only tax them by the net proceeds, then I claim that we should go further and exempt or partially exempt by taxing only the net proceeds of the corporations and persons engaged in agriculture, engaged in manufactures and engaged in stockraising. There is not a solitary difference between the propositions. If the idea of this Constitutional Convention is that only the net proceeds of property shall be taxed, then I say let us place a broad and wide provision in this constitution taxing only the net proceeds of all property in Montana. Certainly if you do not do that, I say it is unfair, unjust and unreasonable, not only to ourselves, but to the people of the state, that we should insert this provision exempting this particular class to a certain extent and not exempting any other class or species of property. The mining property in Montana is fairly and equitably and justly taxed under this report. We not only tax the im*provements upon the claims* but we tax the surface ground; we tax not only the surface ground and the improvements, but we tax the net proceeds as provided by law. The Legislative Assembly of the state of Montana may levy a one per cent or a ten per cent tax upon those net proceeds. Put in this proposition of the gentleman from Choteau to exempt water ditches to a certain extent by taxing only their net proceeds, he does not provide that the tangible property of that water ditch shall be taxed; he does not even go as far as the mining company and tax everything in sight and everything on the surface. Now, I believe in an income tax; I believe in as little ad valorum tax as possible; but if the convention believes in this, if the convention is going to hew its line to this policy, then I say let us put in a general section as to all property. The state of California and the state of Colorado are the two great states of the Union next to Montana that irrigate their lands. The state of Colorado in its constitution has inserted no provision exempting the water companies from taxation, or even providing for their taxation in any partcular manner. They stand upon an equal footing with every species of property within that state. The constitution of California does not provide a single word in any way, form or manner as to how this species of property shall be taxed. It is taxed in that state as all other property is taxed. Now, arguments can be brought to bear exempting any species of property. If you exempt this we can bring up the same arguments exempting stock. We have millions of acres of as fine grasses in Montana as there are in the world. We have not got stock enough to eat that grass. There are thousands upon thousands of dollars going to waste every year in Montana by not having horses, and cattle and sheep enough to feed on this grass.

Then, let us provide also hay to feed their stock with in hard winters, so that we can get money into the Territory. Let us only tax the net proceeds, and I will assure you we will get very little taxes.

Mr. Knowles, of Silver Bow: I want to ask the gentleman if all or any of the industries that he has named are regulated in their sale and production by law. Does the law regulate, or give the power to the Board of County Commissioners to regulate the price the farmer shall get for this property? Now, these ditches that are built to distribute water and sell it are subject under this proposition No. 26 to be regulated by the County Commissioners as to the price they shall get for their commodity. Now, it would be a fact that if you add a tax on these ditches and put it up to such a rate that the County Commissioners in judging what should be charged for water, would have to add so much more to the price of the water, the ranchman would have to pay just so much more for the water for the privilege of farming. It is just coming right around in a circle again. Somebody has got to pay for it. If you put down the water at a low price, the farmers get their water that much cheaper, although the state does not derive the same amount of taxes from it. And it does seem to me that if you want to encourage agriculture here, and the digging of these ditches and if you are going to regulate their price, then they ought to be taxed on their net proceeds.

Mr. Collins, of Cascade: Every species of property in Montana is regulated by the Board of County Commissioners. The assessor places his value upon it. The Board of County Commissioners meet and equalize it. They may increase or decrease the assessed valuation of that property, so that a county in one part of Montana may pay an assessed valuation upon, say, my farm land at ten dollars an acre. A county in another portion of Montana may pay tax on that land at five dollars an acre or one dollar an acre. The Board of County Commissioners have to regulate all property, so far as taxation is concerned. Now, I will go a step further and say in answer to the gentleman from Silver Bow that this convention, nor the people of Montana should favor the gobbling up of the water of Montana by any company or corporation. I do not believe it is the right policy, and I believe the best place to assert that this is not the right policy is right here in this constitution. The natural waters of this great Territory in the near future will be reservoired; they will be brought out on these great plains, and they will be either brought out by the state of Montana or the government; and I claim as a matter of policy that they should not be brought out by combined capital; that if they are, it is like giving over the control of this great country, with its millions of acres, to corporations; that they will virtually own the land when they own the water, and that they will levy tribute upon these people in this country as they have in every country where they own water. The Board of County Commissioners will be powerless, and the regulations will be of no value so far as the great mass of the people are concerned. We are trying to build up a public sentiment by which the government shall expend millions of dollars in reservoiring water, as this telegram in the morning paper says when that is done you will find your speculators and capitalists following in the trail of those surveyors and owning the water and using it for their own purposes, and not for the benefit of the people. The parties who own the water own the land, and there should be no policy adopted in this constitution that will favor that class of people. The policy, in my opinion, should be to compel the state or the government to bring out these ditches and to own this water.

The Chair put the question on the amendment of the gentleman from Choteau, Mr. Conrad, and a division being called for, the same was declared lost by a vote of 15 in the affirmative to 43 in the negative.

The Chair: Are there any other amendments to Section 3?

Mr. J. R. Toole, of Deer Lodge: I have an amendment to offer to section 3.

The Chair: The gentleman from Deer Lodge offers the following: Amend section 3 by inserting in line 2 after the word "deposits" the words "shall not be taxed before patent but."

The motion was seconded.

Mr. J. R. Toole, of Deer Lodge: My object in introducing this amendment is that the printed bill is somewhat ambiguous, and it is a question that might be raised, that before patents are issued for mining property they would be subject to taxation, or at least the possessory right. In order to make it plain, and to avoid any question of that kind coming up hereafter, I offered the amendment. It makes it plain that before patent the surface ground shall not be subject to taxation; afterwards it may be.

Mr. Mayger, of Lewis & Clarke: If the gentleman will read the section he will see that the land before it is patented is not taxable, unless it might be the machinery or improvements upon any land, patented or unpatented, would be taxable under a proper construction of the law.

The Chairman: The question is upon the adoption of the amendment offered by the gentleman from Deer Lodge.

The Chair put the question on the said amendment of the gentleman from Deer Lodge, Mr. Toole, and a division being called for, the same was declared lost by a vote of 20 in the affirmative, to 31 in the negative.

There being no further amendments to Section 3 the Clerk read Section 4 as follows: Sec. 4. The Legislative Assembly shall not levy taxes upon the inhabitants or property in any county, city, town or municipal corporation for county, town, or municipal purposes, but it may by law invest in the corporate authorities thereof powers to assess and collect taxes for such purposes.

There being no amendment to Section 4, the Clerk read Section 5, as follows: Sec. 5. Taxes for city, town and school purposes may be levied on all subjects and objects of taxation, but the assessed valuation of any property shall not exceed the valuation of the same property for state and county purposes.

There being no amendment to Section 5, the Clerk read Section 6, as follows: Sec. 6. No county, city, town or other municipal corporation, the inhabitants thereof nor the property therein, shall be released or discharged from their or its proportionate share of state taxes.

There being no amendment to Section 6, the Clerk read Section 7, as follows: Sec. 7. The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this state, or doing business therein, shall be subject to taxation, for state, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this constitution exempted from taxation.

There being no amendment to Section 7, ,the Clerk read Section 8, as follows: Sec. 8. Private property shall not be taken or sold for the corporate debts of municipal corporations.

There being no amendment to Section 8, the Clerk read Section 9, as follows: Sec 9. The rate of taxation of real and personal property for state purposes in any one year shall never exceed three (3) mills on each dollar of valuation, and whenever the taxable property in the state shall amount to one hundred million dollars ($100,000,000) the rate shall not exceed two and one-half (2½) mills on each dollar of valuation, and whenever the taxable property in the state shall amount to three hundred million dollars ($300,000,000), the rate shall never thereafter exceed one (1) mill on each dollar of valuation; unless a proposition to increase such rate specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election

There being no amendment to Section 9, the Clerk read Section 10, as follows: Sec. 10. All taxes levied for state purposes shall be drawn from the treasury but in pursuance of specific appropriation made by law.

There being no amendment to Section 10, the Clerk read Section 11, as follows: Sec. 11 Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

There being no amendment to Section 11, the Clerk read Section 12, as follows: Sec. 12 No appropriation shall be made, nor any expenditure of the state during any fiscal year shall exceed the total tax then provided for by law and applicable to such appropriation or expenditure, unless the Legislative Assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in Section nine (9) of this article, to pay such appropriations or expenditure within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war. No appropriation of public money shall be made for a longer term than two years.

There being no amendment to Section 12, the Clerk read Section 13, as follows: Sec. 13. The State Treasurer shall keep a separate account of each fund in his hands, and shall at the end of each quarter of the fiscal year report to the Governor in writing, under oath, the amount of all moneys in his hands to the credit of every such fund and the place or places where the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. The Governor, or other person or persons authorized by law, shall verify said report and cause the same to be immediately published in at least one newspaper printed at the seat of government, and otherwise as the Legislative Assembly may require. The Legislative Assembly may provide by law further regulations for the safe-keeping and management of the public funds in the hands of the Treasurer, but, notwithstanding any such regulation, the Treasurer and his sureties shall, in all cases, be held responsible therefor.

There being no amendment to Section 13, the Clerk read Section 14, as follows: Sec. 14 The making of profit out of public moneys, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony and shall be punished as provided by law; but part of such punishment shall be disqualification to hold public office for a period of not less than ten years.

Mr. Mayger, of Lewis & Clarke: I move to strike out all of Section 14 after the word "office" on the third line.

The motion was seconded.

The Chair stated the motion.

Mr. Goddard, of Yellowstone: I move to strike out the entire section for the reason that it is a matter within the province of the Legislature, and not of this convention.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Yellowstone (Mr. Goddard) and a division being called for the same was declared lost by a vote of 24 in the affirmative to 25 in the negative.

The Chairman: The question is now upon the amendment offered by the gentleman from Lewis & Clarke, Mr. Mayger, to strike out all after the word "office" on line 3.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Mayger), and a vote being taken the same was declared lost.

There being no further amendments to Section 14, the Clerk read Section 15, as follows: Sec. 15. The Governor, Secretary of State, State Treasurer, State Auditor and Attorney General shall constitute a State Board of Equalization; and the Board of County Commissioners of each county shall constitute a County Board of Equalization. The duty of the State Board of Equalization shall be to adjust and equalize the valuation of the taxable property among the several counties of the state. The duty of the County Boards of Equalization shall be to adjust and equalize the valuation of the taxable property within their respective counties. Each board shall also perform such other duties as may be prescribed by law.

There being no amendment to section 15, the Clerk read section 16 as follows: Sec. 16. All property, except as in this section provided, shall be assessed in the county, city, town, township or school district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State board of equalization, and the same shall be apportioned to the counties, cites, towns, townships and school districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and school districts.

There being no amendment to section 16, the Clerk read section 17 as follows: Sec. 17. The word property, as used in this article, is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things real, personal and mixed, capable of private ownership; but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation, represented by such stocks is within the State and has been taxed.

There being no amendment to section 17, the Clerk read section 18 as follows: Sec. 18. The Legislative Assembly shall pass all laws necessary to carry out the provisions of this article.

Mr. Clark, of Silver Bow: I move that the Committee do now rise, and report back this proposition, No. 27 with the amendments as adopted.

The motion was seconded.

Mr. Loud of Custer: Before that question is put, it seems to me, that section 7 conflicts with section 2 Section 7 provides that the power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this Constitution exempted from taxation. Now, section 2 provides that the Legislative Assembly may, in its discretion, exempt from taxation other property in addition to that herein specified, but all exemptions shall only be by general law. It seems to me that the last part of the provision in section 2 would be of no use if we adopt section 7.

The Chairman. Does the gentleman wish to make any motion.

Mr. Loud of Custer. I move to strike out the words "this Constitution" in line 4, section 7, and insert "and not by general law exempted from taxation."

The motion was seconded

The Chair put the question on the said motion of the gentleman from Custer, Mr. Loud, and a division being called for, the same was declared lost.

Mr. Hickman of Madison: I would like to ask a question of some of the legal rights in the convention In section one of the last clause, "The Legislative Assembly may also impose a license tax, both upon persons and upon corporations doing business in the State." I want to know whether this is to be construed here as saying that the Legislature can levy a special poll tax under the provision. I would like some one better versed in the law than myself to explain it.

Mr. Warren of Silver Bow: I would say that as a member of that committee that that matter has been entirely overlooked by the committee.

Mr. Collins of Cascade: This matter did not come up in the committee, but I think that this certainly would cover that. The legislature would have complete authority under this constitution to levy a poll tax. This matter came up, I think in the Constitutional Convention of 1884, and the then chairman of the Judiciary Committee, who is the present chairman stated that the legislature would have authority to levy a poll tax under this provision of the Constitution.

Mr. Goddard of Yellowstone: It seems to me, that the object of this language is for the purpose of levying a tax upon the business and not upon persons and corporations. I presume that is the intention of the committee, and I move to insert the words, "upon business of persons or corporations doing business in the state"; so that it will read "The Legislative Assembly may also impose a license tax upon the business of persons and corporations doing business in the State."

Mr. Collins of Cascade: I would state, Mr. Chairman, that a poll tax is a license tax; it cannot be anything else; and that every person that pays poll tax under the law is paying a license tax.

Mr. A. F. Burns of Lewis and Clarke. That section reads all right. It does not need any change. (Reading) "both upon persons and corporations doing business in this State."

The Chairman: The question is upon the amendment offered by the gentleman from Yellowstone, Mr. Goddard.

The Chair put the question on the amendment of the gentleman from Yellowstone, (Mr. Goddard,) and a vote being taken, the same was declared lost

Mr. Clark of Silver Bow: I move that the committee do now rise and report the amendments.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow, and a vote being taken the same was declared carried.

IN CONVENTION

President Clark in the Chair.

The Convention was called to order.

Mr. J. K. Toole of Lewis & Clarke: Mr. Chairman, the Committee of the Whole have had under consideration Proposition No. 27, article on Revenue and Taxation, and have authorized me to report the same back, with the recommendation that the same pass. There are no amendments, except a mere verbal one in the second line; the word "Legislature" should be "Legislative Assembly." That is a verbal error.

The President: The Chairman of the Committee of the Whole reports that they have had under consideration Proposition No. 27, and instructed him to report the same back with the amendments, which amount to only one or two minor changes. What is the pleasure of the Convention?

Mr. Whitehill of Deer Lodge: I move that we now take up the proposition for the consideration of the amendment reported by the Committee of the Whole, and place it upon its final passage.

The Motion was seconded.

The Chair put the question on the said motion of the gentleman from Deer Lodge, (Mr. Whitehill,) and a vote being taken the same was declared carried.

The President: The Clerk will read the proposition by sections.

The Clerk read section 1 as follows: Section 1. The necessary revenue for the support and maintenance of the State shall be provided by the Legislative Assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specially provided for in this article. The Legislative Assembly may also impose a license tax, both upon persons and upon corporations doing business in this State.

Mr. Warren of Silver Bow sent up an amendment

The President: The gentleman from Silver Bow moves to amend by adding after line 5, "Also to impose a poor and road tax."

The motion was seconded.

The Chair stated the motion.

Mr. Hogan of Silver Bow: I hope this amendment will not prevail. I do not think it is customary in the Constitution of any state to have it specified that a poor tax will be levied on each person. I do not think it right. I think as it stands now it is good enough. The road tax the Legislature can provide for, and I think this is not a Constitutional province.

Mr. Bullard of Jefferson: It seems to me that if this is to be put at all, that it ought to be in after the word "impose"—"The Legislative Assembly may impose" &c.

Mr. Warren of Silver Bow: I accept the amendment.

Mr. Goddard of Yellowstone: I do not see what right the Legislative Assembly or any other assembly has to impose a poor tax or a road tax upon any corporation.

Mr. Hirshfield of Lewis & Clarke: That very suggestion was discussed by a number of the members of the Committee, although I don't know that the Chairman of the Committee was present, and we held that it was highly improper to insert a clause of that kind in the Constitution; and that is one of the reasons why it was omitted.

Mr. Burleigh of Custer: Mr. President, I think it is just as much out of place to insert the provision here in this Constitution as it would be to put in a goat tax, or a tax on rattlesnakes. It seems to me that it is a matter for legislation only.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Warren, and a vote being taken the same was declared lost.

Mr. Rickards of Silver Bow: I want to ask, before we pass to the consideration of Section 2, careful attention to the wording of the last part of Section 1 in line 5. "Both upon persons and upon corporations doing business in this state.". Now I believe it has been decided by the highest Court in Montana that a woman is not a person. Should a woman see fit to establish a bank in the city of Helena, would she have to pay a tax under this section? I ask it in all seriousness.

Mr. Warren of Silver Bow: I would make an amendment to that, Mr President. I move to amend that to read "Any person or thing." (Laughter).

The Clerk read Section 2 as follows:

Sec. 2 The property of the United States, the State, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation; and such other property as may be used exclusively for agricultural and horticultural societies, for educational purposes, actual places for religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity may be exempt from taxation The Legislative Assembly may, in its discretion, exempt from taxation other property in addition to that herein specified, but all exemptions shall only be by general law.

Mr. J. K. Toole, of Lewis & Clarke: I move to strike out that portion of Section 2 after the word "taxation" in line 5.

The motion was seconded.

The Chair stated the motion.

Mr. J. K. Toole of Lewis & Clarke: The reason that I offer this amendment is that I believe that it contravenes the 14th amendment of the constitution of the United States. I think it is an invitation to give the Legislature power to do that which they would not be authorized to do. That amendment provides that citizens shall be entitled to the equal protection of the law. It has been decided I think by as eminent an authority as there is in the United States, by Judge Fields of California, that any exemption which is in itself an exemption of property which does not belong to the State, to the county, city, town or municipality, is in violation of that provision of the Constitution of the United States. There was a case decided by Judge Fields when he was on the Western Circuit. The case was appealed to the Supreme Court of the United States, and the Court said with reference to it that it was a grave question, and it was not the duty of that Court to pass finally upon that proposition, and that the case then and there could be disposed of on other questions, and they proposed to dispose of it on other questions than that. So that I think it may be fairly said that the authority which is here sought to be given to the Legislative Assembly is against that provision of the Constitution. That case goes further, that railroads, institutions and those things which are supposed to be builded for the dissemination of advantages to the public and the public good might come within the provision, but to authorize generally an exemption from property might violate that provision in the Constitution. I might take occasion to say here that four years ago when I was a member of the Constitutional Convention of the Territory, I opposed the provision which exempted from taxation the mines of this Territory, and I urged then that as one of the reasons for my opposition. It was then put in as an exemption. Here it is put in in a different manner. I introduced a resolution myself which was embodied substantially in this proposition which authorized the taxation of mines and did not release them or work any exemption of them, but it taxed the property at its given value by which it would add over two million dollars to the assessable property of this Territory and yet not be felt by any one in the Territory. I say I do this with justice to myself, having asserted this as one of the reasons at that time for my opposition to that measure. But I went further at that time and stated that I believed that no system was builded upon a better foundation than that which declared equal taxation But my observation and experience in this matter has demonstrated to me the perfect wisdom and propriety of the proposed article of this constitution with reference to the taxation of mines. I mention this simply in connection with the other matter as illustrating its bearing upon this proposition.

The Chair put the question and the amendment of the gentleman from Lewis & Clarke (Mr. Toole) and a vote being taken the same was declared carried.

Mr. Marshall, of Missoula: Mr. President, I offer an amendment to strike out of the second section the words "Actual places for religious worship."

The motion was seconded.

The Chair stated the motion.

Mr. Collins of Cascade: I ask unanimous consent to have the ayes and nays entered upon the Journal upon the amendment offered by Mr. Toole.

The President: It cannot be done except by unanimous consent. If there be no objection the ayes and nays will be entered.

Mr. Rickards of Silver Bow: Mr. President, since the vote was so decisive I object to the vote being taken.

The President: The Chair would state the amendment offered by the gentleman from Missoula. The amendment is to strike out of line 4 the words "Actual places for religious worship."

Mr. Marshall of Missoula: I want to premise what I have to say on that question by saying that I am a member of a Christian church and profess to be a christian, and am a christian, and yet I believe it is wrong to exempt churches from taxation. I believe that it is in violation of the principles of the bill of rights which we adopted the other day, and in violation of the fundamental principles of our country, that is, the separation of church and state entirely. But the bill of rights which we adopted the other day says "No person shall be required to attend or support any ministry or place of public worship." I believe if we adopt this provision that we compel every person to support a place of public worship. By exempting the property of one person from taxation we necessarily increase the taxation upon everybody else's property. A certain amount has to be raised. If the property of one person is exempted of course the property of other persons is taxed that much higher to make up for the difference, and if you exempt church property you must necessarily tax the property of everybody else to support that church. I believe that it is wrong in principle. There may be some people in this Territory that do not believe in churches at all. I do not know that there are, but there may be, and we do by adopting this proposition force those persons, who are citizens of the State perhaps, to support places of public worship in the way I have stated. There may be Jews in this country who have no synagogue in this town for instance. By exempting the property of other denominations from taxation, I say that you force those jews to support places of worship that they do not believe in and do not believe ought to be supported, and you violate the principle of the bill of rights, and in my judgment violate a fundamental principle of our institutions, the separation of church and State. I have made this motion because I believe that it is right fundamentally. I am in favor of churches, but I say let everybody support its own church, and do not force people who are not in favor of churches to support my church or your church. That is my doctrine.

Mr. Burleigh of Custer: I will say in connection with what has fallen from the lips of my illustrious friend from Missoula County that I am not a member of a christian church (laughter). I would say, though I cannot say it with so much assurance as he has, that I am a christian. What may happen in the providence of God hereafter, I do not know. Men have fallen from grace and men have ascended, but I say this that the force of habit from infancy compels me to differ with him, as much as I regret it, upon this question; and while I would limit the valuation of the property exempted much less than it is in the bill, say $25,000, I am in favor of the proposition. I do not think it is necessary to have a church made up of mahogany and decorated with alabaster and everything of that kind, but I beieve in making them respectable places to go and worship according to the consciences of the members and I for one am in favor of exempting church property from taxation and will so vote.

Mr. Rickards of Silver Bow: Mr. President, I certainly shall vote against the adoption of this amendment. If the argument of the gentleman from Missoula County is a good one to be sustained he should have stricken out all of lines three and four, for he says what releases or exempts one person's property thereby increases the burden of every other person or persons. Therefore, if his argument is a good one, then I say to be consistent he should include in his amendment all of lines three and four which read like this: "As may be used exclusively for agricultural and Horticultural societies, for educational purposes." Then again "Places of burial not used or held for private or corporate profit". Now when the gentleman is consistent enough to incorporate in his amendment these words that I have just read, then I think his argument may have some force, but not until then.

Mr. Ramsdell, of Missoula: It seems to me the provisions of this amendment are wise, and that they are progressive ones. The only argument that can be advanced in favor of non-taxation of the church is the fact that it is strictly a moral institution and that it advances strictly moral ideas. That is a good argument and as far as it goes it is logical, but we have also in the limits of the United States and the other civilized countries other institutions that are of a moral character and that have for their sole object the dissemination of moral and intellectual ideas. If you carry this principle to its logical conclusion, in my mind you should exempt from taxation all public and private libraries, all public halls that are used by speakers, and all newspapers that are of a moral character sufficient to warrant this exemption. (Laughter) In my mind, there is no institution, there is no living factor today that exerts the moral influence upon the people of this country that the newspaper does. It holds up to the execration of the public mind those who by their failure in public conduct, have neglected their duties and thereby deserve discredit, while on the other hand it holds up to the eulogy and the admiration of the rising generation all those who by strict attention to their duties and their public conduct deserve such eulogy; and in my mind the power that they possess is fully as great as that of the church When you come down to the cultivation of moral doctrines and beliefs it is not in the church alone that these are propagated. It is in the school. It is at the home; and in fact it is in every avenue of life where men by either word or example can inculcate these beliefs or doctrines Furthermore by exempting churches when you exempt the rich and the powerful you only use the argument that by exempting the wealthy church property worth, say, a million of dollars, they escape large burdens, whereas its neighbor of a more unpretentious character perhaps may not be worth one tenth of that amount—you necessarily use the argument that the church worth millions is doing much more good in the world than the church which is only worth a thousand. And if there is any logic in the statement it is true in an inverse ratio. I believe that churches are not essential and not advantageous in a direct proportion to the wealth and the infuence that they exert I believe that there is many an unpretentious church made out of huge logs and situated on ground that is not worth scarcely the effort to secure the fee title to it, that is of more worth in a moral sense, that it inculcates nobler principles and nobler examples than some pretentious church in some City with its spires stretching spreading towards the Heavens and its colleges spreading over the earth. I do not wish to say anything that would be considered sacrilegious towards the church. I believe that the church, although I am not a professor of any religion, does good in its sphere. But I believe, considering the condition of our public affairs today, in which taxation is one of the most important economical principles in the administration of governmental affairs, I beleve that we should get right down to the root of it, and that all institutions that are not strictly of a public character should pay their pro rata of taxes, and I believe when we reach this conclusion we will have taken such steps in the administration of our economic affairs as will place us on the road to a settlement of those great issues that disturb us today. As I have said before, in questions touching upon this point, you cannot alter the conditions of our government without altering the elementary principles thereof, but I believe that by making taxation universal, and exempting nothing unless it be of a public character, that we shall have taken the first and most important step in regulating our affairs, so that the burdens of taxation shall bear equally upon all—the most important step that can be taken without changing the elementary principles of our government

Mr. Marshall of Missoula: Mr. President, if no other member wishes to say a word, I will only consume a moment or two, in reply to the gentleman of Silver Bow. He did not convince me that I am at all inconsistent It may be right to encourage agricultural societies and anything that will encourage agriculture, and there is no principle that I know of, either fundamentally declared in our Bill of Rights or anywhere else, that would prevent the State from paying taxes, but I say there is a fundamental principle that does prevent the State from encouraging religious institutions and requiring everybody to encourage them whether they want to or not; and this thing of exempting church property from taxation does force everybody to support the churches, because as I said before that exemption is to be made up by taxation upon citizens. It requires every citizen to pay his money to the support of the church—of any church; and I say it is wrong in principle to require the Jews to support christian churches. We require the infidel to support christian churches; we require the protestants to support catholic churches. It may be there is a catholic church in a place that is worth ten times more than all the protestant churches there, and by exemptng it from taxation you make every protestant pay to support that church; and it is for that reason that I say we have no right to do it, because we do not want to mix up church and State. As we have said in our Bill of Rights, the citizen shall not be forced to support any place of public worship. The very same words are used that are used in this section, and I do not think there is any inconsistency. I believe the church is a great moral institution, that it does a great deal to improve the morals of the country. I agree to that; and it is right that we should exempt charitable institutions, and probably agricultural societies, and all that; but I do not see the inconsistency in making the members of each church support their own church.

Mr. Maginnis of Lewis & Clarke: I cordially agree with my friend that as disseminators of religious views, we would not have the right to favor churches by exempting them from taxation; but he says in his argument that these churches are great moral agencies, and according to that aspect I think we clearly have the right to exempt them from taxation. Now what does that mean? What is the great cost of government, after all? Where does the large proportion of our taxes go? For the punishment of crime, for the maintenance of people in the penitentiaries, for the burdens that are brought upon the State by the violation of morals. That is the great drain upon the resources of the people. That is where our money goes. Now, if the old adage that an ounce of prevention is worth a pound of cure has any efficacy or virtue, is it not a profitable and wise investment on the part of the State to encourage any institution which has a tendency to form the mind of the youth that crime may be prevented, looking at it as a practical illustration. We claim that these churches are moral educators, as means for the prevention of crime and consequently as means of saving money to the State. That is the ground that I cast my vote on.

Mr. Knowles of Silver Bow: I am opposed to this amendment. I believe in exempting churches because they are moral institutions. All churches teach morals. They all teach that it is wrong to steal, and to bear false witness, and to murder. If they do nothing else but that, I would say certainly the State should support them. But all churches teach something else besides that. They all have their peculiar religious notions and peculiar creeds that they support, but it is not on that ground that they should be supported by the State. It is only as moral institutions that they should be exempt from taxation and as they contribute to that end, why I am willing to have them exempted. That has been the rule in the past and I have never heard of any great harm happening on account of the exemption of churches but once, and that was an old friend of mine that used to be here in Montana—old man Stone, who said that one reason Ohio went democratic one year was that they had exempted all the churches and they did not exempt all the lecture halls and turner halls and rooms where they had spiritualistic lectures, and the people that attended the exercises in such places as those got mad and voted the democratic ticket and beat the republicans that year. That is the only harm I have ever known to come from exempting churches from taxation. (Laughter).

The Chair put the question on the motion of the gentleman from Missoula (Mr. Marshall).

Mr. Hogan, of Silver Bow, called for the ayes and nays.

There being sufficient number in favor of the ayes and nays, the Clerk called the roll and the vote stood as follows:

Ayes: Bickford, Breen, Burns, A. F.; Burns, A. J.; Callaway, Caldwell, Cauby, Cooper, Craven, Hatch, Hobson, Kennedy, Kohrs, Luce, Marshall, McAdow, Mitchell, Myers, Parberry, Ramsdell, Rotwitt, Schmidt, Watson, Witter,—24.

Nays: Aiken, Buford, Bullard, Burleigh, Burns, E.; Carpenter, Chessman, Collins, Conrad, Courtney, Dixon, Durfee, Dyer, Eaton, Fields, Gaylord, Gibson, Goddard, Graves, Hammond, Hartman, Haskell, Hershfield, Hickman, Hogan, Joy, Joyes, Kanouse, Knowles, Loud, Maginnis, Marion, Mayger, Muth, Reek, Rickards, Sargent, Stapleton, Toole, Joseph K., Toole, J. R.; Warren, Whitehill, Winston, Mr. President,—44.

Absent: Brazleton, Brown, Gillette, Knippenberg, Middleton, Robinson, Webster.—7.

The Chair announced the vote on the said motion and declared the amendment lost.

Mr. Burleigh of Custer: I move the convention do now adjourn.

Mr. Maginnis of Lewis & Clarke: Just one moment. Before the words "Place of burial not used or held for private or corporate profit" I would like to put in the word "Hospitals." Hospitals have been built in this town, and I suppose in all our mining towns, and I think if there is any charity that deserves the recommendation of this convention it is that I move the word "hospitals" be inserted in such a way that it shall apply to hospitals that are not kept for private gain

The motion was seconded.

The chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Maginnis) and a vote being taken the same was declared carried on division by a vote of thirty-six in the affirmative and fourteen in the negative.

Mr. Burleigh of Custer: I now renew my motion to adjourn.

The President There is an amendment offered by the gentleman from Silver Bow.

Mr Bullard of Jefferson: Before that motion is put I would like to be excused during toworrow's session.

The President: If there be no objection the gentleman will be excused. The chair has a telegram from Mr. Brazleton of Deer Lodge County, in which he asks to be excused until tomorrow at 2. If there be no objection, this gentleman will be excused. The question is now upon the motion of the gentleman from Custer that the Convention do now adjourn.

The Chair put the said motion, and a division being called for, the same was declared carried by a vote of 32 in the affirmative to 27 in the negative.

The Convention stood adjourned until Wednesday, July 31, 1889.

TWENTY-SECOND DAY

Wednesday, July 31, 1889.

Morning Session.

The Convention was called to order at 10 A. M. by the President.

The Clerk called the roll

Mr. Burleigh of Custer: Mr. Middleton is unavoidably detained until tomorrow, and I desire to ask that he be excused.

The President: The gentleman from Custer will be excused. The Chair has a message from Mr. Knippenberg in which he says it is impossible for him to get here for two or three days. If there be no objection he will be excused.

The Chaplain offered prayer.

The Clerk read the journal of the previous day.

The President: The Chair has received a communication from General Ruger, commanding the Department of Dakota, which, if there be no objection, will be read.

The Clerk read as follows:

Headquarters of Department of Dakota.
St. Paul, Minnesota, July 25, 1889.

To the presiding officer of the Constitutional Convention of Montana, Helena, Montana.

Sir: I have the honor, in accordance with instructions received from the War Department, to request that the consideration of the Convention be invited to the proposition that a clause be inserted in the constitution of the State of Montana by which jurisdiction shall be reserved to the United States, as provided in Section 8 Article 1 of the Constitution, over the military reservations of Fort Assinniboine, Custer, Keogh, Maginnis, Missoula and Shaw, heretofore declared by the President.

Very respectfully your obedient servant,
THOMAS H. RUGER,
Brigadier General Commanding."

Mr. Maginnis, of Lewis & Clarke: Mr. President, I have received a copy of the resolution that I believe was prepared by the Secretary of War on this subject, and I will introduce it and have it referred to the Judiciary Committee.

The Clerk read as follows:

"Resolution No. 28, introduced by Maginnis: Sec.........Jurisdiction is ceded to the United States over the Military reservations of Fort Assinniboine, Fort Custer, Fort Keogh, Fort Maginnis and Fort Shaw, heretofore declared by the President of the United States, provided legal processes, civil and criminal, of this State, shall extend over such reservations in all cases of which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations."

The President: If there be no objection this resolution, with the communication from General Ruger, will be referred to the Committee on Military Affairs.

Mr. Maginnis of Lewis & Clarke: Mr. Chairman, in connection with that I desire to say that there has been great difficulty sometimes in regulating the matter of Jurisdiction over grounds purchased by the *United States for public buildings. I think the whole thing ought to go to* the Judiciary Committee. It is a question of constitutional law. I think it ought to go to the Law Committee of the Convention.

The President: If there be no objections to the matter being referred to the Judiciary Committee, it will be so referred.

Mr. Hershfield of Lewis & Clarke sent up report of committee.

The Clerk read as follows:

"Report of Committee on Miscellaneous Subjects on Resolution 27, July 30, 1889."

Mr. President, your committee on Miscellaneous Subjects to whom was referred Resolution No. 27 by Meyers of Yellowstone to prohibit persons who hold United States offices from holding office under the State at the same time, have agreed to report favorably on the Resolution and recommend its adoption.

(Signed) L. H. HERSHFIELD,
Chairman."

The President: What is the pleasure of the Convention concerning this report?

Mr. Kennedy of Missoula: I move it be placed on the general file to be considered in connection with the Article on "Miscellaneous Subjects".

The motion was seconded.

The President: If there be no objection the report will be placed upon the general file to be considered in connection with the report of the Committee on Miscellaneous Subjects.

Mr. Parberry of Meagher sent up report of the Committee on Irrigation.

The Clerk read as follows:

"Your committee on irrigation to whom the petition from the Society of Civil Engineers was referred beg leave to report that they have had the same under advisement, and believing that the matter to which the petition refers belongs to the Legislature rather than to this Convention, would report on the same adversely.

(Signed) PARBERRY, Chairman."

The President: If there be no objection the report of the Committee on Irrigation will be received and will be considered adopted.

Mr. J. K. Toole of Lewis & Clarke sent up report of the Committee on Rules.

The President: The report of the Committee on Rules in reference to Mr. Burleigh's resolution will be read.

The Clerk read as follows:

Resolution by Burleigh. Limits of debate in Committee of the Whole to five minutes for each member. July 29, received, read and referred to the Committee on Rules. Mr. President: A majority of your Committee on Rules report the within resolution back without recommendation.

(Signed) J. K. TOOLE, Chairman.

The President What is the pleasure of the Convention upon this report?

Mr. Burleigh of Custer. I ask that it may be taken up and considered at the present time

Mr. Kennedy of Missoula: I move you that the report be rejected and that the resolution as presented by the gentleman from Custer be adopted by this Convention

The motion was seconded.

The President: The gentleman from Missoula moves that the resolution offered by the gentleman from Custer be adopted.

The Clerk read the said resolution as follows:

"Resolved that all debate in the Committee of the Whole shall be limited to five minutes for each member."

The motion of the gentleman from Missoula (Mr. Kennedy) was seconded.

Mr. Rickards of Silver Bow. I would like to ask the intent of the mover of this resolution, whether he means each speech or whether he means the second, third and fourth speeches, bunched together.

Mr. Burleigh of Custer I will answer. It was intended that each speech shall be limited to that, but I discovered I made a mistake in offering the resolution. I should have provided that at least three quarters of an hour should be added to the introductory remarks of some members. (Laughter)

Mr. Collins of Cascade· If we pass this resolution, in Committee of the Whole, each member can only speak five minutes and only once. I believe that is gagging us a little too much.

Mr. J K. Toole, of Lewis & Clarke: I want to say in connection with this that the Committee on Rules does not seem to be a standing committee, and I was unable to see the entire committee. I saw the members of the committee that were here yesterday in the convention, and I found such a difference of opinion among the members that we were compelled to report this back without recommendation. I do not think it will be wise for the convention to adopt it. It might do to adopt such a resolution and make it applicable to the proceedings of the convention, but in the Committee of the Whole where these matters come up, I doubt the wisdom of the measure. The Committee of the Whole was inaugurated for the express purpose of giving the widest latitude possible for debate, and if we are to have any debate at all, the proper place for it, it seems to me is in the Committee of the Whole. Any reasonable restrictions that are sought to be put upon the members in convention would meet with my approval, but I do not think this resolution ought to relate to the proceedings of the Committee of the Whole.

The President: The question is upon the adoption of the resolution.

Mr Burleigh, of Custer. I fail to see any advantage which this convention has derived from debating these matters in the Committee of the Whole. It is the same body, with the exception of a different presiding officer. These matters are brought up. The propositions are read section by section, debated in committee and adopted in committee; but it is not a finality. When the committee rises the same thing is gone over precisely, and it seems to me a waste of time to go into Committee of the Whole upon any of these propositions at this state of the convention. Of course, these are my individual views. Other gentlemen have a right to differ from me as they do, but it seems to me a work of supererogation after having discussed these matters in Committee of the Whole to discuss them in convention. And while they are gone over seriatim, as they are in the Committee of the Whole, to go through the same thing again in the convention, it seems to me, is a clear waste of time.

Mr. Robinson, of Deer Lodge. I endorse thoroughly the views of the gentleman from Custer County. We have a curious set of rules here, and unnecessary time is taken up in discussing these various propositions twice. Once in the House would be sufficient, and if we had the ordinary rules that are used generally in legislative houses to limit these amendments and discussions in the House, I would be opposed to this change in the rules; but as we go over each proposition again thoroughly in the convention after it returns from the Committee of the Whole, I do not see any use in the first place of going into the Committee of the Whole at all. It is only by reason of an arbitrary rule that these propositions have to be submitted to the Committee of the Whole, and if we have to go over them entirely in the body of the convention again, I am in favor of limiting the debate somewhat in the Committee of the Whole.

The President: The question is upon the resolution offered by the gentleman from Custer.

The Chair then put the said question and a division being called for, the same was declared lost by a vote of twenty-five in the affirmative to twenty-nine in the negative.

Mr. J. K. Toole, of Lewis & Clarke: Mr. President, there is another report which I have presented—the report of the Committee on Rules.

The Clerk read as follows:

"Resolution by Maginnis, prescribing manner of acting on report of Committee of the Whole. July 27 received, read and referred to the Committee on Rules.

"Mr. President, your Committee on Rules having had the within resolution under consideration, have directed me to report the same back without recommendation.

"(Signed) J. K. TOOLE, Chairman."

Mr. Maginnis, of Lewis & Clarke: Mr. President, I will withdraw the resolution, as the practice of the convention seems to be settled.

The President: That can be done by unanimous consent.

Mr. Robinson, of Deer Lodge: I ask for the reading of the resolution.

The Clerk read as follows:

"Resolved that when the Committee of the Whole makes its report that the same shall be read as a whole; then the vote shall be taken upon the amendments recommended by the committee, and when these are disposed of the report shall be submitted for adoption, rejection or recommittal as a single question."

Mr. Robinson, of Deer Lodge: I move the adoption of the rule.

The motion was seconded.

The Chair put the question on said motion of the gentleman from Deer Lodge (Mr. Robinson) and a division being called for the same was declared lost by a vote of 18 in the affirmative to 33 in the negative.

The President: Are there any other reports of standing committees?

Mr. Callaway, of Madison: Mr. President, I do not know that I am entitled to offer this resolution at this time, but I offer the following.

The Clerk read as follows:

"Resolved, the Committee on Ordinance is hereby directed to incorporate as a part of the article on Ordinance the following provision. There is hereby submitted to the qualified electors the following as a separate proposition, and if it receives a majority of all the votes cast at the election for the adoption of this constitution, then such provision shall form and constitute a part of the constitution. The form of the vote of those who may vote for such provision shall be 'For Woman Suffrage'; those who may be opposed the form shall be, 'Against Woman Suffrage'. Article .... Woman suffrage. Section 1. The Legislative Assembly shall have the power to grant to all female citizens of the state over the age of 21 years the right to vote at all elections. Offered by Callaway of Madison.

The President: If there be no objection this resolution will be referred to the Committee on Suffrage.

The President: The next order is unfinished business. The convention had under discussion Section 2 of the Article on Revenue and Taxation, being proposition number 27. Everything was disposed of. The Chair had an amendment offered by Mr. Schmidt of Silver Bow. Mr. Schmidt offers to amend Section 2 by placing the word "Actual" on line 4, so as to read "Places for actual religious worship."

The motion was seconded.

The Chair put the question on said motion of the gentleman from Silver Bow (Mr. Schmidt), and a vote being taken the same was declared carried.

Mr. Collins, of Cascade: I would like to have consent this morning to reconsider the vote by which the amendment offered by Mr. Toole, the gentleman from Lewis & Clarke, was adopted, striking out the last sentence. I move that the vote by which that was adopted be reconsidered.

The motion was seconded.

The President: The gentleman moves that the vote by which the last clause of Section 2, beginning at the words "The Legislative Assembly" was stricken out, be reconsidered.

The Chair put the said question on the motion of the gentleman from Cascade (Mr. Collins) and a division being called for the motion was declared lost by a vote of 18 in the affirmative and 30 in the negative.

Mr. Burleigh, of Custer: Mr. President, I desire to offer the following amendment to Section 3.

The President: The gentleman from Lewis & Clarke is entitled to the floor.

Mr. Hershfield, of Lewis & Clarke: In view of the result of the last motion, I would like to introduce this as a part of Section 2.

Mr. Collins, of Cascade: Before proceeding to Section three I would like to offer an amendment to Section 2. (To Mr. Hershfield) Is yours to Section 2?

Mr. Hershfield: Yes sir.

The President: The gentleman from Lewis & Clarke offers to amend Section 2 by adding the following: "Add to Section 2 after the word taxation in the fifth line "The Legislative Assembly may provide that the increased value of land by reason of live fences, fruit and forest trees grown and cultivated thereon, shall not be taken into account in the assessment thereof for taxation."

The motion was seconded.

The Chair stated the motion.

Mr. Hershfield, of Lewis & Clarke: Mr. President, our committee was somewhat in doubt at first as to the propriety of inserting that resolution, thinking that the part of Section 2 which was stricken out yesterday by the convention would cover that purpose. Therefore, I thought that as that is an industry which is surrounded by a great deal of difficulty in our Territory on account of the impoverishment of our lands, that these people who endeavor to cultivate their ground, their farms and their homes ought to have that much consideration at least That was the motive of the introduction of the present resolution, which I trust will be properly considered at the hands of the convention.

Mr. Burleigh, of Custer: I would suggest that there be some limit to this. This constitution will stand for 100 years. What is now a barren plain will be one of the most beautiful places in the world by reason of trees. I would suggest to my friend that it be limited to some time.

Mr. Maginnis, of Lewis & Clarke: It leaves it to the Legislature.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Hershfield) and a division being called for the same was carried by a vote of 46 in the affirmative to none in the negative

Mr. Collins, of Cascade: I would like to amend by inserting in line 7 "But such exemption shall be by general law."

The President: That clause was stricken out.

Mr. Collins, of Cascade: No, the clause with reference to the discretion in exempting other property was stricken out. This amendment of mine comes in after the last word. It has no reference to the amendment by the gentleman from Lewis & Clarke.

The President: That clause was stricken out on motion of Mr. Toole of Lewis & Clarke.

Mr. Loud, of Custer, sent up an amendment.

Mr. Rickards, of Silver Bow: Before any other amendment is offered I ask for information. Was not the motion to reconsider the vote by which this last clause was stricken out—wasn't it carried?

The President: No sir, the motion was lost.

The Clerk read the amendment offered by the gentleman from Custer as follows: "All taxes levied upon the business of raising, growing or ranging horses, cattle, sheep and other livestock shall be levied upon the net proceeds of the same."

The motion was seconded.

The President stated the motion.

Mr. Burleigh, of Custer: Now, Mr. President, this amendment is just as important and is as much entitled to the favorable consideration of this convention as any amendment that has been offered here. It has been offered by my friend in the best of faith, who believes that he is entitled to have that inserted in the constitution. But it suggests itself of my mind to ask this question: Where is this constitution drifting? Where are we to land? What is to become of us if we go on in this manner when we get through with our labors here? We have placed ourselves in the ridiculous attitude of having surrendered the peoples' rights and placed them beyond their control, and having resolved this convention into a legislative body of the very lowest order. Now, I am opposed to the whole system. As I said before, I am aware that whatever is put in this constitution here and ratified by the people is a surrender of the political rights of the people of this Territory, and is placing it beyond their control. I am opposed to the whole system, and while my friend has put his motion in good faith, he has put in here in consequence of precedents established by other resolutions in favor of other interests than the interests which he represents. Now, I say that if those various interests are entitled to the favorable consideration of this convention that the interests which he represents are entitled to the same consideration. I for one am opposed to the whole thing. What is a constitution? It is an organic law. It is the framework for the legislation to fill up. It prescribes the limits beyond which they shall not go. It is a limitation of power and nothing else; and I tell you we are in danger of drifting upon shoals and quicksands here that will ruin the people. I am afraid that when the constitution comes up for public discussion, and is considered by the people, that there will be gnashing of teeth. There are just as intelligent people in this Territory as there are in this convention, just as good people, just as good lawyers, and they will ventilate this thing and expose all of its defects by the force of reason. I think it is time to call a halt. As old Captain Starbuck said, "It is time to heave the ship to and find out the storm centers and which way the wind blows." We will get ourselves into a position here that is as unenviable as any position that men ever placed themselves in, and we will be stamped as anything but constitutional lawyers and wise constitution makers if we go on as we are doing.

The Chair put the question on the amendment of the gentlemna from Custer (Mr. Loud) and a vote being taken the same was declared lost.

Mr. Burleigh, of Custer, sent up an amendment which the Clerk read as follows:

"Amend Section 3 by adding thereto the following: And the Legislative Assembly shall provide some stringent means to ascertain the actual income. No salaries paid officers of the mining corporations shall be accounted as an expense or deducted from the gross earnings. The levy shall not be less than two per cent of the net earnings."

Mr. Burleigh, of Custer: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Burleigh) and a vote being taken it was declared lost.

Mr. Myers, of Yellowstone: I move we strike out in Section 3, line 2, after the word "deposits" the following words "after patent shall have been issued therefor by the United States."

The motion was seconded.

The Chair stated the motion.

Mr. Myers, of Yellowstone: I would like to say, Mr. Chairman, that that would exempt mines or mining property from the time of making final proof until patent was issued. I am inclined to think that that is not the intention of this committee. After a man has made his final proof on his property he has a right to own it and operate it, sell it, or otherwise, before patent issues, the same as after patent issues. Any little matter might detain the papers or delay the issue of the patent for a number of years. In my experience in obtaining title to government lands and mineral claims, the time of issuing patents varies from a few months to six years. I have known it to run as far as six years, yet in that time I had actual possession of the property, have sold property and received all the benefit from it. Now, if this section is adopted with those words in it, the eleven words following the word "deposits" on the second line of Section 3, it will have the tendency to exempt from taxation all mining claims, with the permanent improvement thereon, such as buildings that are taxed with the realty until such time as patent may issue It would be an exemption of property from taxtion other than was contemplated I think by the committee that framed and made this report, therefore I hope my motion will be sustained.

Mr. Mayger, of Lewis & Clarke: I hope the amendment will not prevail I would correct the gentleman in regard to the machinery and the improvements upon unpatented ground.

Mr Myers, of Yellowstone: I would say that I did not mention machinery I said the buildings attached to the realty.

Mr. Mayger, of Lewis & Clarke. I would say under this clause that all machinery and buildings of any kind whatever on patented as well as unpatented ground is taxable the same as any other property in the Territory. There seems to be a disposition in this convention and by some members who are honest enough about it but who do not understand the position of mines to overtax the mines and mining claims. A mining claim is paying as much tax, if not more, at the present time, than any other property in this Territory. As a miner myself I have asked no exemption from taxation, we are willing to pay our proportion, but any other bill or provision except this before the convention now would be a burden upon the miners. As for the taxing of mines before they are patented I do not believe the constitution of the United States would allow such a thing to be done because they belong to the government. A man may have a prospect, without anything at all, and yet he will be taxed upon that prospect, and I do not think it is the intention of this convention to tax a piece of property of that kind If he improves that property and puts anything on it, that improvement is taxable, which tax the miner is willing to pay. Therefore, Mr. President, I hope this amendment will not prevail.

Mr. Knowles, of Silver Bow: I think I can explain somewhat the law upon this subject In an early decision that was made in the Territory, and the attempt to forfeit mining claims that were sold to the Territory, it was decided that the government could do nothing to interfere with this possessory right of mining claims, that it was interfering with the right of the government of the United States in the primary disposal of its soil. It was put in that decision on the ground that the Territory had no sovereignty in this matter. Since that time there has been a decision of the Supreme Court of the United States in regard to taxing lands on the lines of these Pacific railroad companies and where they have contracted to sell or give patents to dispose of to these railroad companies, in consideration of their building the railroad, and patents have not issued, they have decided that they cannot be taxed; that the government of the United States still has an interest in those lands.

Mr Marshall, of Missoula· Have they not decided, Judge, that the title passed to the railroad by the grant without a patent?

Mr. Knowles, of Silver Bow: I know the decisions of the courts are very peculiar on that point They decide that it passes to the railroads without the grant, but that when it comes down to taxing them it does not pass them enough so that they can tax them The decisions are a little peculiar on that. We have a special bill by Congress upon the railroads where they are surveyed. Now, that is a bill that has been passed in the last five years.

Mr. Callaway, of Madison· If the gentleman from Silver Bow will allow me to interrupt him a moment, I would ask him if he can explain that peculiarity?

Mr. Knowles, of Silver Bow: No sir, I am not exactly lawyer enough to know why the railroads as an actual fact have a grant in presenti and yet have not a good grant enough to be taxed. I cannot explain it, but that is the decision of the court and we have to abide by it. Then, there is a disposition to hold that the propriety of mining claims and holding them and working them is really a sort of a process of purchasing them from the United States, and until they get title, that they cannot be taxed. Well, with that view the Legislature passed these laws in relation to taxing mines; but in the decision that was rendered by the Supreme Court of the United States in relation to taxing the Comstock mine, which I think was taxed on the net proceeds the same as we tax them here, why, they held that that was subject to taxation and that it was proper. Now, the Comstock mine was not patented. It never has been patented. And yet the Supreme Court of the United States has held that that is proper. So I apprehend that the Legislature of Montana Territory, taking this other view of the matter, thought that they could not tax; while I believe that they can tax this possessory right under this decision relating to the Comstock lode and that mines that are not patented can be taxed the same as patented mines, only it must be so worded that it will only tax this possessory right, that it must not tax a mine as a mine or real property.

Mr. Maginnis, of Lewis & Clarke: Is there any objection to striking out those words?

Mr. Knowles, of Silver Bow: No, I do not know that there is, except that we make it in such a way that we tax the whole mine and not tax simply the easement or mining right. I see no reason why we cannot tax in the state these possessory rights just the same as we do after they get a patent.

Mr. Maginnis, of Lewis & Clarke: There ought to be no inequality about it.

Mr. Knowles, of Silver Bow: No sir, I know that that was the reason that the Legislature failed to pass this law, because they did not believe they had the right. If they had thought they had the right they would have taxed the properties, but I believe they can tax unpatented lands if the law is properly worded.

Mr. Cooper, of Gallatin: I understand the objection of the gentleman to be that he has no objection to the taxation of mines after the issuing of the final receipt. This, I believe, has been the custom in agricultural districts that, where farmers and people have paid for their lands and got their final receipt, the land is then subject to taxation. Now, I have had a little experience in this matter of mining improvements, and I have some mining property which has been taxed from the time I paid for the property or got my final receipt from the Register and Receiver. This, I believe, is the point the gentleman makes, that the property ought to be taxed from the day it is paid for in the United States land office, and I am of the opinion that he is correct in this matter. My property has been taxed since I received my final receipt. I raised an objection but it was held that it was taxable. The gentleman wants to do away with this long and protracted delay of the Government in the withholding the issuing of patent. The land is practically owned by the person who pays for it. While he has no patent he has the final receipt, and a sale is recognized just the same as though he had a patent. I think the amendment should be so amended, if it could be suggested by some of the mining gentlemen here, that the words "final receipt" be substituted for "patent." I do not think there would be any hardship in the matter one way or the other.

Mr. Myers of Yellowstone: I would say in answer to the gentleman that this bill evidently provides for that. Strike out the words "After patent has been issued by the United States." Then the bill goes on to say "Shall be taxed at the price paid to the United States." The price paid for these mining claims, agricultural or any other claims, is paid at the time of making final proof; that is, the final payment is made then, and the party who makes the final proof and pays the Government price for this land or mining claim, as the case may be, is then to all intents and purposes as much the owner of that property as though a patent had issued for all practical purposes. He can work it; he can sell the mine, improve it, etc. Hence, I claim it may be taxed the same as any other property. That is the rule that obtains in the agricultural districts in the counties in which I have been paying taxes, and I see no reason why it should not apply to mines immediately upon the payment and making final proof and paying the Government price, that the mining claim then should be subject to taxation the same as agricultural lands.

Mr. J. K. Toole, of Lewis & Clarke: I do not see how there can be any objection really in striking out those words. Under the decision of the Supreme Court of the United States and many of the states it has been held that when a final receipt has been issued, whether it be to agricultural lands or mineral lands, or any other public lands of the United

States, the party that has that receipt has a perfect equitable title to the land and that the Government retains only a legal title, and that when the receipt is issued that it is then a proper subject of taxation, except in the case which was mentioned by the gentleman from Silver Bow, which is under special acts of Congress granting lands to railroad companies: and the reason for that discrimination grew out of the fact that there was inserted in the bill of provision, which, at the time of its introduction, looked really as if it was done in the interest of the people, but it, as a matter of fact, was done in the interest of the railroad company; and that was that "no patent should issue to any of the lands hereby granted until the sum of ten cents an acre" which was intended to include the cost of surveying, selecting and conveying the land "should be paid to the railroad company." And it was held that until that amount of money had been paid that there was no right to, and that consequently there was no authority for the taxing of these lands. But if these words are stricken out it will leave it so that, by the decisions of the Court as they have been pronounced and exist today, no mining lands or other public lands could be taxed until the final receipt had been issued, and the land paid for, and when that was done they would be subject to taxation just the same as patented land. And I agree with the propriety of the suggestion made by the gentleman from Yellowstone that if we leave the word "patent" in, it will delay the matter at the General Land Office in Washington for four or five years and the mine itself escape taxation for that period of time, that there is no reason why the owner should not be taxed.

Mr. Luce, of Gallatin: Is an amendment now in order?

The President: Yes sir.

The gentleman from Gallatin (Mr. Luce) sent up an amendment.

The President: The gentleman from Gallatin offers to amend the amendment offered by the gentleman from Yellowstone by inserting the word "certificate" after the word "patent" in line 2.

The motion was seconded.

The President: Is this offered as an amendment to the section, or as an amendment to the amendment?

Mr Luce, of Gallatin· An amendment to the section.

The President It cannot be considered then in the light of an amendment, and hence the question is upon the motion of the gentleman from Yellowstone.

Mr. Myers, of Yellowstone· I desire before the vote is taken on my amendment to say that Mr. Dixon has an amendment prepared which I would like to include in my motion.

The President: An amendment to the amendment?

Mr. Luce, of Gallatin· Yes sir. I would like to include it as a part of my amendment.

Mr Dixon, of Silver Bow: I will offer that, Mr President, as a substitute for the suggestion offered by the gentleman from Gallatin.

The motion was seconded.

The President: The gentleman from Silver Bow offers the following· Amend the amendment by inserting instead the following: "After purchase thereof from the United States." The gentleman from Yellowstone accepts this amendment.

Mr Myers, of Yellowstone: With the consent of my second, I will move to strike out the eleven words in the second line, and insert in lieu thereof that which Mr. Dixon has set out.

The motion was seconded.

Mr. Dixon, of Silver Bow: The amendment contemplates the striking out "After patent has been issued therefor by the United States" and inserting instead thereof "After purchase from the United States."

The Chair put the question on the said motion and the vote being taken was declared carried.

The President: The amendment as amended would include the striking out of the words "after patents shall have been issued therefor by the United States" and insert in lieu thereof "after purchase thereof from the United States."

Mr. Luce, of Gallatin· All I have to say on that matter is that it amounts to about the same thing. A piece of land is purchased from the United States and patent issued therefor. Then the language could remain as in Section 3 by adding the word "certificate" after the word "patent" in Section 2. Then it would read like this: "After patent certificates shall have been issued therefor by the United States, shall be taxed, etc." You cannot tax lands so long as the title remains in the United States, and upon any sale by the United States to a private proprietor or purchaser, a patent certificate always issues therefor, and it has been held that whenever a patent issues, it relates back to that purchase, of course. My amendment covers all the ground. I have no choice as between the two.

Mr. Burleigh, of Custer: I desire to offer an amendment to the proposition.

The President: The gentleman from Custer, Mr. Burleigh, offers the following amendment: "Strike out all of Section 3."

The motion was seconded.

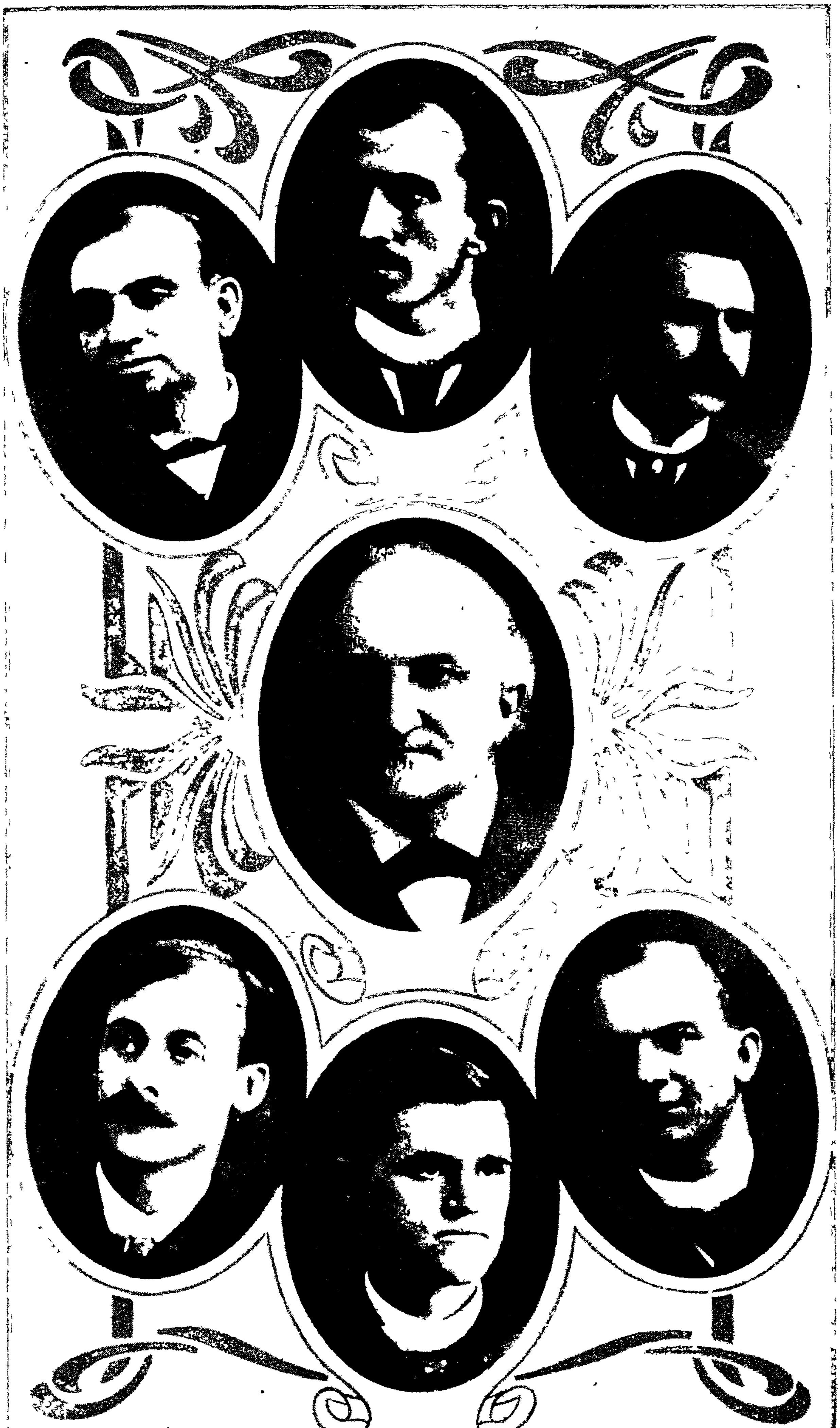
Mr. Burleigh, of Custer: ....ow, Mr. President, I desire to say this, and it is merely a reiteration of what I said before, that I do not believe it is proper for this convention to proceed here in the manner we are proceeding to legislate—usurp the functions of the Legislature. I think this is a matter that should by every principle known to constitutional law, and to other law, be left in the hands of the people to be exercised by their representatives in the Legislative Assembly. I know of no reason which would justify us in legislating upon mines here, prescribing the rules by which they are to be governed or taxed, any more than upon stock, cattle or breeding mares, or other species of property. It seems to me to be entirely within the province of the Legislature. Is it possible there is an industry in this country that is of so precarious a nature that the owners and promoters of the enterprise are afraid to submit it to the people to be determined by them? If so, I would advise all such men to abandon such avocation and pursue some calling which is not of so precarious a nature. I desire to place myself fairly and squarely upon record here, in favor of the exclusive right of the people to legislate in regard to all these matters. I know these mines should be fostered. I believe they should be fostered; and I believe the people will foster them so far as they are entitled to be fostered. But I do not believe that it is the prerogative of the delegates in this convention to descend to legislation, and to take these questions up, and to spend their time upon them. I have been out over the mining district here, and I have seen enough of the vast storehouses of wealth in our majestic mountains here to justify me in the belief that, like every other great industrial enterprise, that the interest should be fostered, for I believe it to be one of the cardinal if not the cardinal interest in this Territory; and everything that has a tendency to promote the public wealth and prosperity should be fostered. Now, I am not one of those who believe that it is necessary to build a man of straw for the sake of knocking him down. I believe the proper place to exercise generosity. I believe the proper place to expend labor, is where nature has done most to invite enterprise, and labor, and money; and I believe in no other country in the world has more been done by nature to encourage the industry, the energy of man, and the expenditure of money to develop its resources than in the mines of the gulches and the summits of these mountains; and I will never be found wanting in aiding to the extent of my power in a just, fair and equitable way, whether it be in the way of legislation or otherwise, in the development of these resources. But I cannot consent, and I will not consent to lend my support to the measures which are advocated to transform this convention, which is met here to frame a constitution, an organic law, the framework of all law, for the people of the great state of Montana, into a legislative body.

Mr. Luce, of Gallatin, sent up an amendment.

The President: The gentleman from Gallatin (Mr. Luce) offers to amend Section 3, proposition 27, by adding thereto the following: "Provided that persons, companies or corporations, who have constructed or may hereafter construct ditches or canals for the distribution and sale of water shall be taxed(respecting their business of such sale or distribution, and their property connected therewith, only upon the net income from the sale of said water; provided further that the salaries of any officer or trustee shall not be deducted from the gross income in order to arrive at the net income."

The motion was seconded.

The Chair stated the motion.



ROBERT E HAMMOND
LLEWELLYN A LUCE GEORGE J. REEK
B PLATT CARPENTER
JAMES E KANOUSE THOMAS F COURTNEY
ARTHUR J CRAVEN

Mr. Conrad, of Choteau: I would like to call for the ayes and nays upon that question.

The President. If there be no objection the ayes and nays will be entered on the journal.

Mr. Gibson, of Cascade: Is an amendment to that amendment in order?

The President: Not at the present time.

Mr. Cooper, of Gallatin: I simply want to say in reference to this amendment that in my opinion the importance of this matter is not truly and really considered by this convention. Mr. President, I consider this one of the most important matters that has been discussed upon this floor. It is a matter that relates to the future development of this new state. This season has demonstrated that the agricultural merests of this Territory cannot further expand without some improvement, and very material improvement in the way of water ditches and water resources. Every available inch of water in this Territory throughout the agricultural districts has been appropriated and has been used and is now vested property. We all know that home capital is very slow to embark in such enterprises as this and so far as my observation has gone it is to the effect that some inducement must be offered to outside investors to get them to put their money in enterprises of this kind. I have in my mind one enterprise of this kind which perhaps is an enterprise of the greatest magnitude of any that has been put into practical operation in this Territory, or perhaps in all our sister territories. This enterprise has been put through in the county where I live—in Gallatin county. It remained for years partially completed and capital declined to take hold of it because there was a lack of inducements. Now sirs, I believe if there are any inducements to be offered they should be of a general nature. That is to say, they should be relieved of the burdens of taxation. The farmers themselves undertook to offer an inducement for the construction of this great canal, and what has been the result? The law that is upon our statute books that provides that the County Commissioners shall regulate the price of water has been practically abrogated by the promoters of this enterprise going to the farmers themselves and exacting from them contracts covering a period, I will not say a number of years—perhaps Judge Luce can inform me on that point—but if my recollection serves me right, it is some twenty or thirty years.

Mr. Luce, of Gallatin: No, eighteen years.

Mr. Cooper, of Gallatin: Eighteen years. Very well. The price agreed upon by the farmers and the contractors in this canal was the exorbitant sum of two dollars per inch, and I undertake to say that in future time, as years go by, that these very people who have agreed to pay this exorbitant price for that water will find that they have got a mortgage upon their property worse than any other that could be invented. For instance, it is conceded by those well versed in irrigation matters that it requires one inch per acre, or 160 inches of water for 160 acres of land to irrigate it properly during the season. Take that view of the situation and those people have to pay $320 per year, which I undertake to say they will find a burden that they can scarcely carry; and it seems to me that to relieve the situation, and to relieve the people who desire these water privileges and are not able to build canals themselves, that some inducement ought to be offered I believe that this resolution as offered by my colleague from Gallatin will accomplish the object. It will accomplish the object in my opinion and relieve these people. It requires very large capital to construct these canals now As I have said before, all of the smaller waterways have been appropriated and water now has to be taken from the large rivers, and it seems to me that these large tracts or desert sections of our Territory cannot be reached without some such provision as this—without those canals being constructed In our county at least one-half of the entire area of the county is a hilly waste, while it is the very finest land, land that is composed of washy and vegetable mold wash from the mountains, which can be converted into a flower garden if proper water facilities could be had. Still, it is so located upon an elevated plane that it would take nearly one-half a million of dollars to get water from either the Madison or the Gallatin Rivers. Now, sir, I am in favor of the adoption of this clause as a part of Section three in some form and I hope it will be in proper form. I would be willing to insert there a restriction that the canals or ditches should be large enough to flow ten thousand inches of water, and I would be willing to say that this inducement should end after the ditch or canal had been in practical operation for a period of ten years. Mr. President, I hope the motion will prevail.

Mr. Maginnis, of Lewis & Clarke: It seems to me nearly all the gentlemen who have spoken on this question admit the danger of having our water all taken up by rich individuals or rich corporations. They all admit that, unrestricted, the men who own the water and sell it under these conditions—(interrupted).

Mr. Cooper, of Gallatin: Will the gentleman allow me to interrupt him a moment? I had intended to say in answer to the gentleman from Cascade who stated yesterday that speculators were seeking to appropriate this water, that I fear no danger from that direction; that our laws are such that whoever appropriates that water must go ahead and improve their water rights, and if it covers land and for sale at reasonable price, then I have no objection. But they cannot appropriate the water. They can hold it for twenty days only.

Mr. Maginnis, of Lewis & Clarke: I was going to speak of those who took up the water in good faith. The men who hold the water under these conditions practically own the country, and it seems to me that it would establish a system of landlordism in contrast with which the evils of all other systems of landlordism will be as nothing. Now, gentlemen have said that this clause which provides for the County Commissioners can fix the price of water, will be a practical check upon that and prevent them from absorbing the country and its soil by the privileges that accrue to them from their works. But the gentleman from Gallatin himself has shown how easy it is to avoid a restriction of that kind by their going in advance and making these contracts with the farmers so as to cover a long term of years; that they can practically get around a qualification of that kind and be as oppressive in this country as they have been in Colorado or elsewhere.

Mr. Cooper, of Gallatin: I was going to further suggest that it was necessary not only for constitutional but legislative protection to protect the farmers against these speculators and against themselves.

Mr. Maginnis, of Lewis & Clarke: That is exactly the line of argument, my friend, that I was going to make, because all such questions as these present themselves to a people in two aspects. First, the natural desire of immediate and speedy improvement, and secondly, the ultimate and fatal consequences; and, my friend, a policy which ends sometimes in fatal consequences and becomes a great burden and tyranny upon the people is more often lost sight of in the desire that we all have for quick and speedy improvement of the resources of our country. As the gentleman has well said, it is an extremely grave question, and we ought to approach it in the gravest manner, because I can see that a mistake that we make here may lead to most dire and disastrous consequences to the future of this country, and may raise questions that may be difficult to settle by those who may come after us. I sincerely hope that the government of the United States, or the state even, if it delays our improvement a year or so, will ultimately adopt such a policy that all the supply of water will be under the control of the state, which can do justice to all its citizens, and not under the control of the individuals and corporations which may oppress and impoverish the future agriculturists of this country.

Mr. Knowles, of Silver Bow: I would like to say a few words. The proposition that the government of the United States will within the next fifty years do anything to provide for a system of irrigation in this western country, and make a public appropriation therefor, I think hardly probable. If we are to look to the state to make appropriations for digging these ditches, then the state must incur a debt, and this debt must be paid by taxation, or else there must be some provision by which there is to be a revenue derived from these ditches to the state. Now, in a proposition that was shown me last night it was provided without a vote of the people that the state could not run in debt more than $100,000 except for defense in time of war or something of that kind. Now, $100,000 will not dig very many ditches of any great size, and hence this state, in my judgment, will not be able to dig ditches so long as that provision in the constitution remains. It provides further that the state may go into debt more than $100,000 by a vote of the people, but my judgment is that when you come down to a vote of the people upon that question there will be so many people that are interested in other pursuits than agriculture that it will be almost impossible by a vote of the people to create a debt for digging irrigating ditches. That will require something more than a selfish consideration; it will require a statesmanship that the ordinary run of people will hardly come up to. And now, in relation to these contracts for water; the law enters into every contract, and my impression is now that every contract that will be entered into for water will be subject to the right of these County Commissioners to provide what the rate should be. If that contract was in excess of the maximum rate that was provided by the County Commissioners, I believe that the party could refuse to pay anything more than the maximum rate. I am not positive in regard to this as a matter of law; but that would be my impression. Now, without any examination upon that subject, a contract in relation to water would have to be made subject to the provisions of the law. In relation to previous contracts, contracts that have already been made in relation to water, it would not affect them. We cannot by virtue of our constitution here, or by virtue of any law, impair the obligation of a contract; but future contracts that are made in relation to water, I believe we can provide for in our constitution. I feel that this is an important matter. Mining interests are variable, but if we can settle up our valleys with a thriving farm population we know that here will be permanent wealth; here will be homes, and around homes will accumulate property that will remain the property of the country. The wealth that is created by mines passes away in the next fifty or one hundred years perhaps, but the wealth of the homes will remain, they will become the permanent wealth of the country, and whatever we can do to foster the agricultural intersts of this country should be done.

The President: The question is upon the adoption of the amendment offered by the gentleman from Gallatin (Mr. Luce).

Mr. J. K. Toole, of Lewis & Clarke: I move to strike out those words in the amendment offered with reference to the salary of the officers, so that it will stand upon the same footing exactly as the exemption of mining property. I refer to the amendment of the gentleman from Gallatin.

Mr. Luce, of Gallatin: I accept that amendment.

Mr. Marshall, of Missoula: I call for a division of the question.

The President: The Clerk will read the amendment as accepted by the gentleman from Gallatin.

The Clerk read as follows:

Amend Section 3, Proposition Twenty-seven, by adding thereto the following: "Provided that persons, companies or corporations, who have constructed or may hereafter construct ditches or canals for the distribution and sale of water shall be taxed, respecting their business of such sale or distribution, and their property connected therewith, only upon the net income from the sale of said water.

Mr. Burleigh, of Custer: I am decidedly in favor of a system of irrigation that will tend to develop the agricultural resources of this country, and if it is put in its proper place I shall certainly support it. I desire to state to this convention that I have devoted more attention in the last ten years to the subject of irrigation than to any other subject; and I believe that without it our country so far as its agricultural resources are concerned is worthless. With it it will become one of the most fruitful countries on the face of the earth, especially the eastern part of it. I met, the other day, as I was going from Miles City to St. Paul, Mr. Allison, the Senator from Iowa, Senator Hoar of Massachusetts and Senator Hale of Maine, some of whom had been upon this Committee of Irrigation appointed by Congress, and I had several hours in which to talk to them, and I improved the time. I ascertained from them, although I had heard it before through the papers, that Congress had waked up to the interest of the western country, and especially the subject of irrigation, and had appointed a committee to look into it and see what could be done Well, now, I talked to them something in this wise. They spoke of the barren character of our country. I told them it was so. It was like a garden, fruitful in all that nature could bestow, but was unproductive because it was not cultivated. They wanted to know what system I would recommend; said I, irrigation. Take the waters of the Yellowstone, take the waters of the Missouri, take the waters of all our rivers, and by a system of irrigation turn them out upon the table lands here and upon the bottoms, and mix the water which God made here for a purpose, with the soil, and we can produce bushels and bushels of oats to the acre. They said that was all nonsense. I said, I have seen it produce here without irrigation in the wet season. Now, said I, what are you doing, gentlemen—because I am in the habit of talking very plainly, and have a peculiar way of expressing my ideas—said I, you wise gentlemen in Washington are appropriating hundreds of thousands of dollars of money every year under the pretext of improving the Yellowstone and Missouri Rivers, to drain those waters out, without giving us the benefit of it. If it was left here a few days longer we would get more evaporation; and, said I, what is the necessity of improving the rivers for navigation? That necessity has ceased. Who wants to improve navigation? The railroads have come and there is no occasion for improving the navigation of these rivers for any purpose whatever. Then, said I, you are draining this water out, and you are sending it out to inundate the valleys of the Mississippi, overflow the plantations there and spread disaster and ruin upon that country. Then what? Then you turn in and after having brought this evil upon it, you appropriate hundreds of thousands and millions of dollars to build up levees, to prevent the very act which you have assisted in bringing about. Now, that is the practical effect of it. Every man knows that. Well, now suppose heaven, in its infinite mercy, would bestow a little sense upon those men in Congress—it is devoutly to be hoped for, although unreasonable to be expected—and those men would wake up to the interests of the northwest here—I will say Montana—and to the interests of northern Dakota, that is capable of supporting a population of ten million of people if a proper system of irrigation can be had there, and the waters that are now going to waste could be mixed with the soil of God's earth to bring forth its increase. Until that thing is done there is no reason for us to hope for a permanent dawn of prosperity. Why, I told Allison, said I, you are as far behing old Rameses II, Monarch of the Pharoahs, who lived four thousand years ago as it is possible for a Congressman to be behind a sensible fellow like that. He saw the mighty inundations of the Nile flowing into the Mediterranean while his lands were parched up and burned; his people were suffering from scurvey and all the evils attendant upon a dry climate, and he reasoned thus to himself, "Here I have my slaves, and I irrigate a little spot here, and it produces wonderfully. I will extend it." And he went ahead, and by making vast reservoirs and canals he economized the waters that flowed down. He canaled and irrigated that whole country, and Egypt became under the magic power almost of that monarch the very garden and granary of the earth. Well now, what is there in the system of irrigation? All that we want, because everything is equally distributed here if we only understood it; if we could have reservoirs here to save this surplus of water when it is flowing from the melting snows to the Yellowstone and the Missouri and distribute it over the most of this ground in the dry season here in summer. Take the Big Horn, the Little Horn, the Powder River, and all these creeks that send down such volumes of water in the spring, and store that up in proper storehouses, in reservoirs, and use it during the dry season of the year, and every inch of this soil can be made as productive as the soil of Egypt was. It would be a very expensive system. It cannot be done without great expense, but it can be done because it has been done. If it could be done by the Egyptians in their country, cannot it be done by Americans in the nineteenth century? It may be said that they had slaves. I have yet to learn that a free man where his interest is involved cannot do as much as any slave either Egyptian or African: and I tell you the only hope for Montana is in adopting a system of irrigation here that will economize the water of this country and use it at the time when we need it in moistening the soil, in order that we may cause the earth to produce its fruits. This committee will be here in a few days. I favor the creation of a committee on irrigation for the purpose of preparing some statistics to lay before these people; and as great wonders have been wrought upon men in the past, and as the scales have fallen from the eyes of the blind in the past, and as those who have lost their sight were permitted to see, it is very possible that the Congress of the United States can go through the same miraculous transformation and see the necessities of the western country. But I do not believe that it is proper to insert this in the constitution. Clothe the Legislature with the power, which means to clothe the people with the power, and if a mistake is made one year the people will not be slow to correct it; they will correct it the next; and they will continue to improve in their intelligence, in their enterprise, until they have discovered the true method of accomplishing this desirable end. But to go and nail it down and to rivet it in the constitution, if it goes wrong, means to seal it up forever and for many years, without the possibility of revoking it. I hope the thing will be allowed to go to the Legislature so that they may consult with their constituents, and the people may have a chance to send men up to the Legislature to ascertain what our best interests are and to promote them.

Mr. J. K. Toole, of Deer Lodge: In order to give us a further opportunity to pursue the investigation into this matter of irrigation, I move that we take a recess until two o'clock. (Laughter)

The motion was seconded.

The Chair put the question on the motion of the gentleman from Deer Lodge (Mr. Toole), and a vote being taken the same was declared carried.

The convention took a recess until 2 P. M.

Wednesday, July 31st, 1889.

Afternoon session.

The Convention was called to order at 2 P. M. by the President.

The Clerk called the roll.

The President The Convention was engaged in the consideration of unfinished business. The Convention has under consideration an amendment offered by the gentleman from Gallatin to Section 3.

Mr Dixon of Silver Bow. I desire to offer an amendment to the amendment of the gentleman from Gallatin which I believe he is willing to accept.

The President: The substitute offered by the gentleman from Silver Bow for Section 3 will be read by the Clerk, and if the gentleman from Gallatin is willing to accept it as an amendment it will be entertained, otherwise it cannot be.

The Clerk read as follows:

Substitute for amendment offered to Section 3, Proposition No. 27, by Luce of Gallatin. After Section 3 add the following: And number the succeeding sections to correspond. Section 4 Ditches, canals and flumes heretofore or hereafter constructed by any person, company or corporation for the sale, rental, distribution or other beneficial use of water shall be taxed upon the annual net proceeds of such sale rental, distribution or use, in such manner as may be provided by law. Provided that the use and price of such water shall at all times be subject to regulation by the Board of County Commissioners or other authority as in this constitution provided, and provided further that this Section shall apply only to the ditches, canals and flumes of such persons, companies or corporations as shall within such time as may be provided by law after they commence the sale, rental, distribution or use of water, make and file in the office of the Secretary of State their duly executed written consent to be subject to and comply with all the terms and conditions of this Section and all provisions of this Constitution and the failure of any such person, company or corporation to make and file such consent shall render the ditches, canals and flumes of such person, company or corporation, subject to taxation in the same manner as other property, without regard to this section, so long as said person, company or corporation fails to file such consent.

Mr. Luce of Gallatin· I will accept that substitute for my amendment.

Mr. Hartman of Gallatin· I do not intend to occupy but a few minutes in making the remarks which I have to make on this amendment, and what I have to say will also be directed towards the motion of the gentleman from Custer to strike out section 3. It is not encouraging to attempt to say anything in favor of a proposition that is apparently as hopeless in favor of a proposition that is apparently as hopeless ad unpopular as the one which I am about to espouse in this convention; but I take it to be that the true rule of taxation shall be that all the property shall bear its just proportion of the burdens of taxation, and that the only exception that should be made thereto are the properties of the United Sates, Municipal governments, Municipal corporations, and charitable institutions which we have already provided for. Now I am not discussing the merits or demerits of the amendment which is offered by the gentleman, nor am I discussing the merits of section three towards which the motion to strike out is directed. I am ready to say that if this were a legislative body I would heartily support both of those propositions, but much as I dislike to repeat a proposition which has become familiar by its repetition in this convention, I do not believe that it is within the province of this body, that it is within the prescribed or proper duties of it, to insert anything of this character in the Constitution. I do not think there is a man upon this floor who should be here representing any industry in particular. I believe in the inter-dependence of all industries. I do not think you can strike a blow at the mining industry of this territory but what you cripple every other great industry in this great State, and moreover do I believe that if you extend a preference to anyone of these industries you tend to correspondingly injure the other industries. There is still another way in which to look at this proposition. This Constitution is to be adopted by the people; it is to be approved by them. It is to meet with their ideas of what is right, what is just, and what is proper. It is not a Constitution for the mining industry, it is not a constitution for the agricultural industry, nor for the stock industry but for the great people of this great State of Montana. Now I pretend to say that while there is merit in this, is it proper that it should be saddled upon the people as a permanent conditional affair. Mr. President, the purposes of the constitution as I understand them to be are to declare principles with reference to conditions which in themselves are permanent. Legislation may be directed to conditions which are of a temporary character, and then when the conditions which have damaged them have passed away it is in the power of the Legislative assembly to repeal the law which was enacted with reference to them when they were in existence; and for those reasons I propose to oppose the amendment which has been offered and I propose to support the motion of the gentleman from Custer to strike out this Section. As I said before, it is not that I am an enemy to the Section; it is not that I oppose the merits of it, for I do not discuss that, but I do say that if this is adopted the constitution will fix this matter irrevocably by its act, and its effect will be that nohting short of a consttutional amendment can change it. It is directed towards conditions which are of themselves temporary and not of a permanent nature. I am well aware of the fact that any word that I utter will do no good in this convention. The convention has already adopted a certain theory in reference to it, and I have no doubt they will continue in it; but I have felt it my duty at this time to declare myself against making a great statute book out of the Constitution of the State of Montana.

Mr. Dixon of Silver Bow: I do no desire to discuss this matter, but merely to state that it is desired to put this matter in relation to ditches in a subsequent section by itself and number it Section 4.

The President: The chair is aware that the member made an error, but intended to correct it. The substitute offered by the gentleman from Silver Bow has no reference to Section 3, and is not offered as an amendment to Section 3. It is stated here "A substitute for the amendment to Section 3." But afterwards states "add the following and number the succeeding Sections to correspond. Section 4." This being the case the question now is upon the motion of the gentleman from Custer to strike out Section 3. That motion will take precedence to the consideration of this Section.

Mr. Collins, of Cascade: I would like to inquire why won't it be in the province of the convention to amend the section and make it as perfect as possible.

The President: It is not an amendment to the section but is matter for a separate section

Mr. Collins, of Cascade: The motion of the gentleman from Silver Bow County is to amend Section 3 by adding to it

The President: No; it is to make it a separate section and number it Section 4. The question before the convention now is upon the motion of the gentleman from Custer, Mr. Burleigh, to strike out Section 3.

Mr. Burleigh, of Custer, called for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows: Ayes: Burleigh, Burns, A. F.; Hartman, Haskell, Hobson, Kennedy, Loud, Mitchell, Ramsdell, Watson—10.

Nays: Aiken, Bickford, Brazleton, Breen, Brown, Buford, Burns, A. J.; Burns, Edward; Callaway, Cardwell, Carpenter, Chessman, Collins, Conrad, Cooper, Courtney, Craven, Dixon, Durfee, Dyer, Eaton, Fields, Gaylord, Gibson, Gillette, Graves, Hammond, Hatch, Hershfield, Hickman, Hogan, Joy, Joyes, Kanouse, Knowles, Kohrs, Luce, Maginnis, Marrion, Marshall, Mayger, McAdow, Muth, Myers, Parberry, Reek, Robinson, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, Joseph K.; Toole, J. R.; Warren, Whitehill, Winston, Witter, Mr. President—59.

Absent: Bullard, Cauby, Goddard, Knippenberg, Middleton, Webster—6.

The Chair announced the vote and declared said motion lost.

The President. The question recurs upon the amendment offered by the gentleman from Silver Bow, which is to constitute a new section.

The Clerk read the said amendment.

Mr. Gibson, of Cascade: I am opposed to the passage of this section because I believe it is an unjust discrimination in favor of such corporations as are contemplated If such exemption is made it will be because of the benefit that will accrue to Montana from the construction of these canals or ditches. Now, if this principle is allowed, I cannot see why it should not apply to other corporations in the Territory whose work redounds to the benefit and advantage of this Territory. I cannot see, if that principle is correct, why the Northern Pacific Railroad Company and the Montana division of the Manitoba Railroad Company should not be subject to this same exemption These institutions, these corporations have done vastly for the development and benefit of Montana. The advantages which have accrued from them cannot be estimated, and they will continue to benefit this Territory and develop it. It is a notorious fact that these institutions, these corporations have made no money out of Montana. Their net profits amount to nothing, and I cannot see why, measured by the same principles, these railroads should not pay taxes on their net earnings as well. I cannot see why the iron bridges that span the Missouri River down in Cascade and Choteau County should not be subject to the same rule. These corporations that have built these bridges have conferred and are conferring very great benefits upon Choteau and Cascade Counties and the farming interests of those sections of country. The stock interests are being very greatly benefited, and other interests are being benefited in proportion. In fact, I believe that the men of this Territory who are investing their money in great enterprises generally are benefactors, and if you consider the men who associated themselves together to build canals and ditches in this country, I cannot see why you should not consider the men who are investing their money in the development of the great many other interests of the Territory. I do not believe in the principle. I believe it should be relegated to the people. I believe this question is so vast and so important that you will take care of it, and see to it that the best results accrue in the future. Now, I wish to say here that I am in favor of developing the agricultural interests of Montana. I believe they can only be developed to their fullest extent by the application of this system of irrigation contemplated. I believe the water that flows out of these mountains should be carried over the table lands and into the valleys of Montana, and I think every man is a benefactor who takes out a ditch and causes two spears of grass to grow where one was accustomed to grow. I believe in the agriculture of this country, and I believe Montana will never become a great and prosperous commonwealth until we lay strong the foundation of its agricultural interests. I am greatly in favor of any broad system which will utilize the waters of this country in agriculture; but I am not in favor of this particular measure.

Mr. Luce, of Gallatin: It has been asserted here upon the floor of this convention that in all probability the United States of America, or the state of Montana, would take into consideration and perhaps into actual operation the control of all the waters of the Territory, and so distribute them that every man shall have his share of them. Now, that is one—if I may be excused by the gentlemen who have introduced this idea here—that is one of the impracticable notions that prevail. While we started as far back as 1878, and only this year was there a junketing tour of several gentlemen to come out and look at us and see if we were still inoculated with the idea of bringing a little water on our land. We have known that ever since the first settler threw down his pack in Montana. It is not a new thing. How are you going to do this, if it is done at all? We have provided in our constitution, as is provided in every other, that private property cannot be taken for public use without compensation. It is in general considered that any water right now acquired is private property as sacred as any other property, as sacred as a farm Then let us understand how the state, for instance, is to take charge of this system of irrigation and give us one great comprehensive system that is to equalize all these waters and distribute them over the Territory. It is one of those things that no man can find out. Let me tell you the man is not within the sound of my voice now that will ever live to see any such thing. You come in contact with every right, every riparian right and every other such obstacle in the way of success of such enterprises. Whenever this country is made to blossom as the rose, whenever these lands are reclaimed from their dusty, dry condition, it will be by the force of individual enterprise and by private enterprise. Let me tell you another thing. You cannot get together today, as the law now stands, and bring one dollar of capital from abroad into this state to build a big irrigating ditch anywhere. If you think so, try it. It cannot be done. People do not let their money out from a distance. They will not bring it here or send it here to be controlled by County Commissioners. There seem to be obstacles enough thrown around the distribution of water in the fact that the rental of these waters shall be left to the Boards of County Commissioners in the respective counties. This is enough to shut out all foreign enterprise in this matter and all foreign capital. Nobody but our own people will ever do it. Now, I want to call your attention to a state of facts that perhaps was not considered, and that is that the private irrigating ditches now in use have been brought upon all the lands that any private individual is capable or able to bring water to. The other enterprises to come are such as will bring water to vast bodies of land, larger bodies of land. It cannot be done by individual enterprise, or probably by home capital. No one farmer can sit down now and pay fifty to seventy-five thousand dollars to bring out an irrigating ditch to irrigate sixty-five to seventy acres of land, however desirable it may be. Farmers have heretofore joined together, four, five, six, eight or ten of them, and have brought water out and put it upon their respective farms. Now, consider one moment this state of affairs. Suppose that the ten men go into operation to bring out water over ditches for ten pieces of land. Without that water not one of those pieces of land is worth a cent. I will show you land all over this Territory in the same condition year after year which is entirely worthless without water. Then they go to work at an expense of five thousand dollars apiece and bring out this water and reclaim this land. The aggregate expense is fifty thousand dollars. The land, when reclaimed, each tract is worth ten thousand dollars apiece. Then you have a tract of land that will be worth to the Territory one hundred thousand dollars by the combined operation of these same men. What will you do? The proposition that now stares me in the face if this is voted down is that the assessor may come and assess this one hundred thousand dollars of property, assess it as he assesses every other species of property, and it is right enough. But it has been created by one irrigating ditch, and then he goes to this other irrigating ditch and he takes that also. That is the proposition now before this convention. I cannot see that there is any wisdom in such a proposition. If there is anything that should be fostered it is the agricultural interests of this country, and I do not want to see the agricultural interest of this country fostered to the detriment of any other interest; but I undertake to say that when you foster that interest in this way you add to every other interest, because you can stretch your eye out here through the valley of the Gallatin, if you please, the best irrigated valley today in Montana, and you will see thousands upon thousands of acres of land that are not worth one cent in their present condition; and on the other hand, you may cast your eye upon any stream and you will see thousands upon thousands and millions of inches of water running to waste and doing nobody any good. Oh, gentlemen tell me that after a while the state will take these up in great reservoirs and distribute them. It will never be done by us while your son, or your son's son, or your grandson's son lives Let us take care of ourselves today. The great foundation of our wealth is agriculture. I would not give much for the industry of mining or any other industry in this country if it were not supplemented and supported by this interest of the agriculturist. You must not forget that the production, or the conducting of water upon land, creates something new. It makes that green and lovely and beautiful to the eye and useful to man that was before a sage brush patch. Why, you could not picket a mule over night and get enough to sustain him to carry you five miles the next day All this land may be made as green as the valley of the Nile, as my friend said this morning. That valley, gentlemen, where old Heroditus, the Greek, was cast away and found a new kind of life and new civilization that the Greeks had never heard of before, and old Heroditus went back and told the Greeks of the new god, the eloquent god, and that was the god of water. Water was the great creator and great regenerator in his day, and it is the same today. Give us water today in Montana and we will give you a garden, we will have more water and less whiskey, let me tell you. Wait until the United States, or the state of Montana, takes care of this proposition, and you will have dust flying in your eyes forever, as you have had it here this summer. Look at the spectacle of gentlemen now who have valuable stock, and valuable blooded stock in this Territory, purchasing hay from eastern states to bring to Montana We can store up all these waters in reservoirs or dams, and there is enough for all reclamation there can ever go on for the next fifty years, to say the least, but we want nothing of this kind; nothing will ever come of it; and I do say I cannot understand how any gentleman in this convention can vote on this third section here aye, and nay for the fourth section proposed by the gentleman from Silver Bow. Mr. President, gentlemen, only reflect one minute. Think of the immense irrigated lands of China. Those are the greatest irrigators on the face of the earth, and every man irrigates there for himself, and I want to correct my old friend from Custer when he tells the convention that old Rameses II built dams and reservoirs up there. They took it out of the Nile. They had the simplest kinds of methods for raising the water while it was high, carrying it in buckets, and every other way they could get the water. When you put water upon arid lands you can safely rely upon the most valuable crops. Irrigation is more reliable than rain. Irrigation cannot possibly be carried on in any country where they depend upon rain; irrigation must be where they depend upon irrigation, because in other countries where the rains descend you may irrigate and then down will come a rain on your crop and destroy it. But the climate of this country is such that you can depend always on irrigation if you can get the water. Now, gentlemen, the question is whether you will have these millions of acres of land that cannot be reached in any other way except by the combined capital of men of your own territory—because that will be the kind of capital employed—or whether any party who is willing to put in his money here and create one hundred thousand acres of land by constructing a ditch that will cost him one hundred thousand dollars will be taxed out of existence for his ditch, or whether he will encourage that man to come along with his ditch and make this new land and add it to the Territory —add this new life, and put us in a condition that whenever we get a drought as we have this year, the next ordinary season we may not be compelled to go down to Nebraska to buy our hay, or to Dakota, or any other place, to buy our wheat

Mr. Burleigh, of Custer: I am surprised that the gentleman should have so far misapprehended the tenor of my remarks as to suppose that I was opposed to any system of irrigation: but it was in the manner in which it was to be conducted, carried on, that I objected; that is, by legislating it in the convention here and putting it in the constitution. Now while he was talking he made a great many broad assertions, and I imagined at first that I was in a trance, and that something like the thunders and the lightnings of Sinai were passing around my head; and I wondered, in that condition if, when the thing was over and he got down into the presence of the Golden Calf, if he would snatch the tablets of Moses and destroy them, or whether it was true that he, like Elisha of old, had fallen heir to the mantle of wisdom that had fallen from the shoulders of Elijah when he was about crossing the Jordan. Now, he has gone on here to state what he knows about agriculture and irrigation, but he has given us no evidence that he knows anything about either of them. I doubt whether he is a farmer; I doubt whether he irrigated at one time more than six inches of land (laughter); if he has, he has failed to say where it is, and how it was, and where is was done. I am as much in favor of irrigation as he is, and I believe in the advantages of it as much as he does. I believe that without irrigation here upon a broad and comprehensive scale that this Territory can never prosper as an agricultural district; but I did not wish to see men come in here and labor, and toil, and at last find themselves in the clutches of a corporation that for the use of the water would wring everything out of them except the very staff of life. It is not to be supposed that men engaged in the business would kill the goose that lays the golden egg entirely, neither is it to be supposed that the men who embark in this system of irrigation will so utterly prostrate the people who do the labor as to prevent them from getting a profit out of them. But I tell you that the man who puts his faith in corporations is a fool, and he will find that he has got into meshes from which he will never extricate himself. I hope this matter will be fostered by the people of Montana, but I do not believe this is the proper place to put it; and therefore I introduced the amendment which so ingloriously found its way to the tomb of oblivion here. But I believe it is right. I think that when the people come to find and understand the workings of it that you will sustain the action of the few men who voted to strike it out.

Mr. Sargent, of Silver Bow: The importance of this question of irrigation is understood by all. The increase in our population will be largely accelerated or retarded by the manner in which this matter is treated. The question is so large and so complicated that it seems to me that any resolution which we can paragraph here will fail to reach its object, and that there is danger, as stated by the gentleman from Lewis & Clarke this morning, that we will make some mistake. It seems to me that we would not make a mistake if we would introduce a section in this proposition something like this, that the Legislature at its first regular session shall appoint a commission to consist of, say, three civil engineers, who shall make a thorough and exhaustive survey of the water and of the arid lands of the state, the estimated cost of building these ditches, and submit a report to the Legislature for a grand comprehensive system of irrigation for the whole state. Our Senators and Representatives have been instructed to request Congress to make an appropriation to help build this system. If no action is taken by Congress, then the Legislature of the state might submit it to the vote of the people for their ratification or rejection. The question is so important and interests every individual so much that I believe they would consider it; and I do not think we can get at it in any other way. I remember reading a speech of our late delegate in Congress, J. K. Toole, in which he stated very clearly and concisely and comprehensively the great benefits that had resulted to nations of antiquity from irrigation, and the necessity of Montana adopting a system of that kind. I think that was ably and well stated, and that it is something worthy of our consideration. The trouble is, we do not know exactly what we want. We are striking out at random, and until in a manner we can surround the whole question and enclose it comprehensively, I do not think that Montana will ever reap the benefit from irrigation which it should. I therefore am opposed for that reason to any of these resolutions or amendments, and think it should be left to the Legislature to decide in some such manner as I have mentioned.

The President: The question is upon the adoption of the amendment.

Mr. Collins, of Cascade: I thought this matter was settled yesterday in the Committee of the Whole. I was very much surprised to find today that we have got to go over the same ground again I believe with a number of the gentlemen who have spoken here that this subject is not a fit matter to go into our constitution. I do not believe that we will be acting the part of wisdom by deciding this great question at this time, by saying to the people of Montana that not only now but for future generations, for centuries and centuries to come, or until our constitution is changed, that we have irrevocably and forever settled this water rights question. I believe it will be hasty action if we do it. I believe it is poor statesmanship to do it. This is the most vital subject that can come before us, not only before us but before the people hereafter. I believe the only sensible way of doing this is to do something in the direction of the suggestion of the gentleman from Silver Bow County. I believe it should be viewed from every standpoint, from a scientific basis and from a common sense basis, from the riparian view, from the view of ownership of water, and from all sides. It should be viewed for the benefit of the people at present, and for the benefit of the unborn people who will inhabit Montana. It is such a broad and such a large question that we should not deal with it at this time. It enters into the very basis of our institutions as an agricultural state, and I do not believe that that great question should be throttled here, and now, and forever. If the gentlemen of this convention will only look up the speech delivered by the gentleman who last represented us in Congress upon this subject of irrigation, read that carefully and come into this convention tomorrow and vote according to their views after that, I will say that there is not a half dozen members here who will vote to throttle this question. Now, the state needs irrigation. You can add one hundred fold to everything that has been said in favor of irrigation; you can bring your greatest orator on earth to say it, and then increase the powers of the orator one hundred times more, and he could not say as much for irrigation as I feel. But, feeling as I do upon the matter, thinking as I do, that it was such a serious and vital question, I do not believe that this constitution should here and now stop future views and tie the hands of the Legislature upon it. If you do, then I say go at it in a practical business shape; go at it like a people that feel that this interest is at the very foundation of their existence. Organize irrigating Districts throughout the portions of your State; authorize those irrigating Districts, to take out the water; to issue bonds running for fifty years; put up interest on the bonds; to construct other ditches, bring the water out into those irrigating Districts and own that water not only for the people who live in the district at that particular time but for the generations hereafter to come. Let it be the heritage of the people, as the air above is, or the water that runs in our streams. The gentleman from Gallatin, Mr. Cooper, one of the most practical and sensible men in this Convention cited to us today an instance of what irrigation will be in the hands of corporations. Take that same instance and presume that it will cost one-half a million dollars, as he says it has cost, and presume that you will supply five hundred farms, as I presume it will supply twice that many. I will state that the people of California issued bonds on those irrigating ditches at four per cent running fifty years, and those bonds are readily taken in the East. I claim, and I make the assertion, that the great state of Montana, with its vast wealth, its vast resources in every line, in a comparatively short time from the period that it becomes a State will have as good credit as the people of any other State in the Union. If the people of this particular irrigation District that my friend Mr. Cooper speaks of, would combine together and build that ditch at a cost of five hundred thousand dollars, the yearly interest upon it at four per cent, which is the amount paid by the people of California, would be twenty thousand dollars. The annual interest from each of those five hundred farms would be forty dollars. The only tribute from each of those five hundred farms would be forty dollars to pay the interest and the only tribute would be five hundred dollars to pay the principle when it became due. That would be a tribute of sixty dollars from each of those five hundred farmers for the purpose of paying not only the interest, but for the payment of the principal when it became due in full. Now, the gentleman says that the owners of this ditch, this corporation, have built this ditch and entered into a contract for a period of eighteen years at a rental of two dollars an inch, or $320 for each farm. That rental will bring the owners of that computing the supply of each farm at five hundred inches annually, nearly 40%—$160,000 annually. The rental would only be $30,000 if the people of that particular section take hold of the business themselves as a base proposition; they would make a saving of $130,000 a year. While the gentleman was speaking I figured out another proposition. Build an immense canal to cost one million dollars, to supply one thousand farmers. The interest on one million dollars at four per cent would be $40,000, each farmer each year to pay the interest would have to pay forty dollars, and to pay each year as a surplus fund to accumulate a sinking fund to pay the principal when due, $120. One hundred and sixty dollars would be the entire amount of cost that this water would cost him.

If that was in the hands of a corporation, and that corporation charged $320; upon $3,200,000 would be charged $320,000. So that you see we can not deal with the question in a business like way. You must leave it to the Legislature, unless we go to work and resolve ourselves into a Legislative Assembly, and refer it to a committee, and the committee report upon it and bring in a bill, and provide for the various ways and means by which this can be done. Now not only will this corporation get the benefit of the tax on the water, but they will get the benefit of the crude valuation of that land, because when a man or a corporation owns the water he owns the land; he not only owns the land but he owns the people upon it, and that is controvertible. History shows it from the very earliest times, and history also shows that in the early times when so much was done for irrigation, it was done by the State; that when the monopolists of those days in their power and panoply sought to control it and took it from the State and got the revenues for themselves the people became worse than peons, and after a time were swept out of existence. Such will be the case here in the agricultural valleys of Montana. The people will be first ground down and oppressed by their oppressions; in the next place they will become worse than peons and slaves, and in the next stage, driven out of existence. That is my impression of what will become of the people of Montana if you provide a constitutional law which will give one or two men the power to appropriate the water of all the agricultural portions of this great territory. Now I claim that should not be done. I claim it should be done in the Legislative Assembly, and that the Legislative Assembly should hedge that policy in so many ways that for a while the people can toil and bear it; but under this proposition hatched out during this recess there is a change of form. The people of Montana hereafter will not be thankful to the people who vote for this, nor to the people who introduced it. I think it is the most hideous thing in Legislation that can be done. I have the opinion that it will hereafter grind the people more than any other thing that has been thought of in this Convention, and thinking so, I hope that the good sense of this Convention will come forward and relegate it to where it belongs, to the Legislative Assembly. If the people have anything to say the Legislative Assembly will never pass a thing like this; never, sir. And I hope that on second thought the lobbying that has been done in the last twenty-four hours will prove of no avail; and that the monopolists and capitalists who propose to control the waters of our country will be relegated to the rear for a few years yet. This provision provides that only ditches that are built by capitalists shall be relieved from taxation. The twenty ditches, or fifty ditches, or one hundred ditches, as the case may be, which capitalists will construct will not pay a cent of taxes, but the thousands, or you might say tens of thousands of ditches built by the poor men will pay their burden of taxation to support the government, and to support the men who own these big ditches. Those gentlemen do not look with an eye of pity to the tens of thousands who have to make their living, but they are ready to bestow their bounty upon the few capitalists that are to appropriate the waters of this country. I say that if those gentlemen feel that way the convention will not bear them out in it. I have given the subject of mining property a close study, not only at this convention but at the convention of 1884; and I came to the Convention of 1884 prepossessed in favor of placing that class of property in the same class with other property. I thought that it should be taxed just as other property is taxed, but upon an investigation of the subject not only then but now, my candid opinion is that it can not possibly be done; and I say further that mining property under this provision of ours is fully taxed; we tax it for its Government price; we tax it if you put a fence around it for pasturage purposes; we tax it for its farming purposes if you farm it; we tax the house, the works and machinery, and the improvements, and everything around and about it. And not only that but we tax the net proceeds whatever the Legislature of Montana may see fit to provide; they can tax those net proceeds for any amount of money they see fit. Now in this taxation of ditch property you do not pretend to tax anything. You do not tax the franchise which is very valuable; you do not tax the lumber which is employed in the construction of it: you do not tax the improvement; you do not tax the machinery; you do not tax a thing. You let it go scot free. You are going further; you are getting up a sentiment in favor of the Government spending millions of dollars to reservoir your water, and giving a few capitalists the privilege of following after them and appropriating the use of all that money and all that water I believe sir with the gentleman from Silver Bow County that if we turn ourselves into a legislative body, wise legislation demands that we should send experts out to investigate this question and act upon it after this investigation. If we do not propose to turn ourselves into a Legislative body then let us send this question to the Legislative Assembly where it belongs. In this connection I should like to read what a gentleman who was here the other day, and in whose honor we adjourned for a few moments, says about Legislation in the Constitution. (Here the gentleman from Cascade read the opinion of Judge Cooley). This is sage advice from a sage constitutional lawyer, and if we follow it in this instance, and in a great many other instances, we will be following in the right direction.

Mr. Cooper of Gallatin I would like to ask the gentleman a question. Will not the gentleman concede that by striking out the last part of Section 2 that this thing is cut off entirely from the Legislature?

Mr. Collins of Cascade: I was going to say before I got through that that part of Section 2 in my opinion should be left in this provision. If you pass this piece of legislation loosely drawn and only considered for a few moments, you will allow a few people of Montana to get together and organize themselves into an organization and select the very choicest waters of Montana, the waters that will cost the least to bring out upon the table-lands and up-lands, and to give them such a monoply as no corporation in Montana ever had before, and you will give them that monopoly without paying a cent of tribute to the people for it. All modern legislation in every State in the Union, not only in every State in the Union but even in despotic Russia—and countries governed by Kings and Queens—tends to taxing natural property. The Constitution of Montana in this respect will tend to make only monopolists and let them go scot free forever. That is just about the difference. Now I hope this matter will be sent to where it belongs. My friend from Gallatin asked me a question concerning this Section 2 Now I would like to see that amendment stricken out by the gentleman from Lewis & Clarke and incorporated in this provision. I think this is a wise provision and I believe it should be incorporated in our constitution The State of Wisconsin has one of the nicest revenue constitutional provisions in the world, and it only comprises the first line of the half of our first section Such men as have given this matter thought and study point with pride to the revenue article in the Constitution of Wisconsin. That gives the Legislative Assembly the power to collect revenues from any source they may see fit, and gives them power to exempt such properties as they see fit I believe you should make this article what it ought to be, what it is destined to be by the committee, after a great deal of consideration. I think that the amendment should be placed back in the section, and I will state that yesterday when the matter was voted down by a few votes, and only a few votes, I rose at once to ask for a division of the ayes and nays, but the President had his attention called to the other side of the house, and Mr. Marshall was recognized, and I think it only fair that the members of the House should allow the Committee to have a separate vote upon this provision of Section 2. I hope it will be allowed.

Mr. Knowles, of Silver Bow: This is the first time I have heard that there was any lobbying in this body, and this is the first time that it ever occurred to me that there could be in this bill anything of a monopoly. I do not see how it is possible that all of the evil consequences that the gentleman has despicted here, and depicted with so much feeling and earnestness, can accrue from the passage of this bill. Now, certainly the section of the country that I live in has no particular interest in this measure, and they have no particular interest in building up anybody who is to monopolize the agricultural districts of this Territory. I do not know of a gentleman in that section of the country that has any scheme of that kind Now, I do say that where the price for water with a man who takes a water ditch is to be limited by the County Commissioners, that there can be no monopoly. If anything, the man who builds such a ditch as that will not get enough money out of it. I know gentlemen will say, "Why, they can control the County Commissioners." Gentlemen, men who build big ditches and live away from the community cannot control County Commissioners, and if they had control of them for one year they cannot control them for the next.

Mr. Maginnis, of Lewis & Clarke: If my friend will allow me just one question.

Mr. Knowles, of Silver Bow: Certainly:

Mr. Maginnis, of Lewis & Clarke: Did you ever know of excessive tolls being collected in this country when the fixing of the tolls was left to the County Commissioners?

Mr. Knowles, of Silver Bow: I never knew they were left to the County Commissioners to fix. I never knew that the contracts or charters were ever let for tolls in this country with any provision of that kind in them.

Mr. Maginnis of Lewis & Clarke: The earlier ones were, but the later ones were not.

Mr. Knowles, of Silver Bow: Well, if you will show me now where there was one that ever amounted to anything, where its charges were regulated by the County Commissioners, it is something that I know nothing of. You take this one that is east from the Little Prickly Pear down upon the Dearborn; you take the Little English Woman out on this road west of here. There was nothing of that kind.

Mr. Maginnis, of Lewis & Clarke: Priests Roads were built and they were regulated by the County Commissioners.

Mr. Cooper, of Gallatin: The tolls were, as I remember, entirely optional with the traveler. He could pay or not, as he pleased.

Mr. Maginnis, of Lewis & Clarke: What brought this to my mind is that a gentleman and myself were interested in a mine in Idaho, and there the County Commissioners were allowed to fix the tolls. They built a road from Lake Ponderay; they built a road about five miles long, and I think the tolls were about five dollars a load. The County Commissioners were in with the job; that was all there was about it.

Mr. Knowles, of Silver Bow: There may be such a thing as corrupt County Commissioners. There are corrupt officials, there is no doubt of it. But the people have the remedy in their hands ultimately about such matters as this; the people ultimately can control. The people that own land that will be irrigated by these ditches are more in number than the men who own the ditches; they have the influence; their influence will be more, and they will control this matter. If this was a business proposition, I would say that it would be doubtful whether they could ever raise any money to build an irrigating ditch in Montana Territory without that provision. But it is thought there would be irrigating ditches built under such regulations as that. Well, now, where there are such regulations as that I think it is but fair to say that they shall be taxed only upon the net income from those ditches. I think that is perfectly fair, and if you go to fixing up anything else and leave it alone in relation to these matters, I think there will be more trouble, and that they will get a bill through the Legislature that will allow these men to charge more exorbitant rates than if you were to put this matter in the hands of the County Commissioners. The County Commissioners are responsible to the people of their county, and they are close to them. The Legislature is not, and as in these large mining counties, they are very little interested in that matter. Now, something has been said about this scheme of surveys. Why, to survey Montana Territory and fix up any scheme at all or any proposition for any grand irrigation here would cost in the first step $50,000. One gentleman here who is an engineer tells me that it would cost double that amount he thinks. And what have you got when you have that scheme? What are you going to do then?

Mr. Maginnis, of Lewis & Clarke: The United States Government has authorized the surveys.

Mr. Knowles, of Silver Bow: Yes, the Government has authorized the surveys. but for Montana Territory to start in with those surveys, why, it will be a great deal of expense, and there will be no result. Now, the gentleman from Cascade has read here from statistics and made remarks of how much it is going to cost for four per cent bonds, and how much for a sinking fund, but he has left out entirely in that calculation the expense of keeping up and maintaining a ditch, and of distributing, selling and disposing of that water, and that is more than all of the interest, and more than the sinking fund. You cannot turn in and provide for distributing and selling and disposing of this water without a considerable expense. In private enterprises there is nothing of this kind about the interest on the money that it costs to build the irrigating ditch and a sinking fund, and the other incidentals that men will have to pay for. Now, gentlemen, let me say that in relation to all public enterprises of this kind that there are always expenses; that they cost more generally than private enterprises, and they become a public matter, and they get into politics, the same as the great Erie Canal in New York, and they will create infinite trouble. My judgment is in favor of private enterprises for irrigation, if they can be properly conducted. I am perfectly unable to see how this thing is to be such a great and grinding monopoly under the limitations that are prescribed, and I have this to say, that the gentleman who wrote this section and presented it here, and those who consulted with him, myself and Mr Toole, certainly were not lobbying during this recess. If this gentleman, or any other gentleman. thinks there was any lobbying with Mr Dixon and Mr. Toole and myself about this matter of drawing up this proposition, they are the worst mistaken men in the whole world. We thought it was a good scheme, to use the phrase of the times, and we were willing to favor it; but if the gentlemen from the agricultural districts do not wish to encourage the bill for private irrigating ditches for the sale and distribution of water under the limitation provided in this constitution, why, we want to assure them we don't want to put it upon them. We are not here to crowd anything of this kind upon them. We only did it because we thought it was good for the agricultural districts, and that it would encourage building irrigating ditches to some extent, and help build up these communities and make them prosperous and happy. There is nobody back of us in this matter; nothing is prompting us here but our idea of doing what is the best for the community; and I would like for every man who lives in an agricultural district to say here whether he wants this or not; and if they don't want it, they will find that we will not vote for it.

Mr. Warren, of Silver Bow: I move the previous question.

Mr. Goddard, of Yellowstone. Mr. President, I have listened to this discussion with some little interest, and while I believe a great many of the gentlemen who have preceded me have spoken upon this question at random. there have been some very good ideas thrown out by the gentlemen nevertheless. I live in a strictly agricultural district. In 1882, a corporation known as the Minnesota & Montana Land & Inprovement Company constructed a ditch forty miles long, which is taken out of the Yellowstone River at a point about 39 miles above Billings, and runs the entire length of the valley, which is known as the Clarks Fork Valley, covering thousands of acres. The company owning that ditch purchased from Northern Pacific Railroad Company the odd sections below the ditch in that valley. This ditch is supposed to have a capacity of 10,000 inches. The year after the ditch was built, in 1883, the ditch company sold water to the farmers at 75 cents an inch, and the farmers even grumbled at that price; but it was found by the ditch company that they could not afford to sell the water even at that price, and there was a year or two there that the farmers had no water, at least at the lower end of the ditch. The consequence was that their crops were a failure. They put in thousands of acres of oats and some wheat, and other crops, got no water, and they had a failure. The ditch company, for two years, I believe, did not pretend to operate its ditch, for the reason that the heavy rains and the water spouts had broken their flumes down, and it would necessitate the expenditure of thousands of dollars of money to keep it in repair. They even went so far as to petition the Board of County Commissioners at two or three Spring sessions to exempt the ditch and its property from taxation. They undertook to do it, I believe, last year, and at that time the County Commissioners came to me for advice upon the subject, as I was the County Attorney at the time, and I advised them that they had no power to exempt the ditch company from taxation. But contrary to my opinion and my advice they did exempt it. Then the ditch company concluded that they would not operate that ditch any longer. The farmers were there by the hundreds petitioning the ditch company to put its ditch in repair and operate it. The consequence was that the company made a proposition to the Board of County Commissioners to have the right to fix the water rate, that if they would enter into a contract with them to guarantee that they would not lower the rate below $2 an inch for ten years, that they would expend $25,000 upon their ditch in repairing the flumes and bridging the ditch, and furnishing water to the farmers. This matter was discussed pro and con there, and when the farmers thought that they were going to lose this opportunity they came down there by hundreds, as I said, and plead with the County Commissioners to enter into that contract extending over a period of ten years for $2 an inch for the water, and it was finally done. And now that ditch company has a contract with the County Commissioners which I do not think is binding, but at any rate they have a contract with the County Commissioners for ten years that they will not reduce the water rate lower than $2 an inch. So that I believe I have seen the practical working of this matter of irrigation sufficiently to be able to state advisedly that there is not a corporation in the world that can build a ditch, and with the water rates which farmers can afford to pay, make any great amount of money out of it. I know that the manager of that ditch company, Mr. Bailey, stated to the County Commissioners that they had lost money from the time that the ditch was built down to the time they had made the contract, to say nothing about the original cost of the ditch; that the operation of the ditch—that the tolls collected were not sufficient to pay the expense of keeping the ditch in repair. Since that ditch was built there have been two or three other ditches built by private individuals and corporations. There is one down there, I believe, that is about twelve or thirteen miles long. It has a capacity of between three and four thousand inches, which was built by the farmers along the line of the ditch, who finally incorporated, and are today an incorporated company. Each of the persons who had an interest in the ditch took that interest in stock. That enterprise, I believe, is successful. It is a short ditch, and everybody who resides under it and owns any land under it has stock in it, and they bought their stock simply by putting that much work into the ditch with their teams and their hands. But I do not believe that this convention is running up against the snag that the gentleman from Cascade County has shown here. I do not believe that if this provision is allowed to remain in the constitution that it will be detrimental to the interests of the people of Montana, but I do believe that it will encourage the building of ditches in all of this agricultural country, which will redound to the interests of the farmers, and necessarily to the intersts of the people of Montana.

The President: The question is upon the adoption of Section 4 as introduced by the gentleman from Silver Bow. If there be no objection the ayes and nays will be entered upon the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Bickford, Browne, Callaway, Carpenter, Cauby, Chessman, Conrad, Cooper, Dixon, Durfee, Dyer, Eaton, Gaylord, Goddard, Graves, Hammond, Hershfield, Hobson, Joy, Kanouse, Kennedy, Knowles, Kohrs, Luce, Marrion, Marshall, McAdow, Middleton, Mitchell, Muth, Myers, Parberry, Ramsdell, Schmidt, Toole, Jos. K.; Toole, J. R.; Whitehill, Winston—39.

Nays: Breen, Buford, Burleigh, Burns, A F.; Burns, A. J.; Burns, Edward; Collins, Courtney, Craven, Field, Gibson, Gillette, Hartman, Haskell, Hatch, Hickman, Hogan, Loud, Maginnis, Mayger, Reek, Robinson, Rotwitt, Rickard, Sargent, Stapleton, Warren, Watson, Witter, Mr. President—30.

Absent: Brazleton, Bullard, Cardwell, Joyes, Knippenberg, Webster—6.

The Chair announced the vote, and the amendment was declared carried.

Mr. Collins, of Cascade: I move that this section be printed, and after the printed copy is laid on the desks it be disposed of permanently. We cannot offer amendments to this section intelligently, and I would like to see it printed before it is incorpated in the constitution.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Cascade (Mr. Collins) and the same was declared carried.

Mr. Cooper, of Gallatin: I move you, sir, that the Proposition No. 26 be printed, and the same action had upon it as this last proposition that has just been voted upon.

Mr. Warren, of Silver Bow: I move to amend the motion of the gentleman from Gallatin that the ayes and nays be called for Section 3.

Mr. Cooper, of Gallatin: I accept the amendment.

The President: The ayes and nays were called upon the question of striking it out and as the vote failed to strike out, it is still subject to further amendment, if the convention desires it to remain.

Mr. Rickards, of Silver Bow: Is there anything pending?

The President. I simply wish to refer this section that has been introduced here as Section 4 to the Printing Committee, according to the vote so referring it, and order it to be printed There is a motion pending with regard to printing the whole copy.

Mr. Rickards, of Silver Bow: In view of this vote by which it was decided that this section just adopted be printed I move that the further consideration of this bill be postponed until that printed copy is placed in our hands

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Rickards) and a vote being taken the same was declared lost.

The President: The question now is upon the motion of the gentleman from Gallatin that Proposition No. 26 be printed.

The Chair put the question on the said motion of the gentleman from Gallatin (Mr. Cooper) and the vote being taken the same was declared lost.

Mr. Mayger, of Lewis & Clarke: I move the adoption of Section No. 3 with the amendments that have been made.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr Mayger) and a vote being taken the same was declared carried, and Section No. 3 adopted as amended.

The President. We will now proceed to the consideration of Section No. 4 in the printed copy which will be numbered Section 5.

Mr. Callaway, of Madison. Mr. President, I give notice that I will move to reconsider the vote by which Section No. 4 was passed.

The President: The gentleman gives notice that he will offer a motion to reconsider the vote by which Section No. 4 was adopted. Notice will be entered upon the minutes.

The Clerk read Section 5 as follows.

"Sec. 5. Taxes for city, town or school purposes may be levied on all subjects and objects of taxation, but the assessed valuation of any property shall not exceed the valuation of the same property for State and County purposes"

There being no amendment to Section 5, the Clerk read Section 6 as follows:

"Sec 6. No county, city, town or other municipal corporation, the inhabitants thereof nor the property therein shall be released or discharged from their or its proportionate share of state taxes."

There being no amendment to Section 6, the Clerk head Section 7. as follows

"Sec. 7. The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this constitution exempted from taxation."

There being no amendment to Section 7, the Clerk read Section 8, as follows:

"Sec. 8. Private property shall not be taken or sold for the corporate debts of municipal corporations."

Mr. Burleigh, of Custer: I move to insert after the word "municipal" the dords "or public", so that it shall read, "Private property shall not be taken or sold for the corporate debts of municipal or public corporations"

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer (Mr. Burleigh), and a division being called for, the same was declared lost by a vote of 12 in the affirmative and a vote of 24 in the negative.

Mr. Marshall, of Missoula: I understand the objection of the gentleman from Custer was that municipal corporations did not include county.

Strictly speaking, municipal belongs to cities, I believe. If it is necessary, and I do not know that it is, I move to insert after the words "municipal corporations" "or counties", so that it shall read "Private property shall not be taken or sold for the corporate debt of municipal corporations or counties."

The motion was seconded.

The Chair put the question on the motion of the gentleman from Missoula (Mr. Marshall) and a vote being taken the same was declared lost

Mr. Carpenter, of Lewis & Clarke: I offer a substitute.

The President: The gentleman from Lewis & Clarke offers a substitute to Section 9, as renumbered, which the Clerk will read.

The Clerk read as follows:

"Substitute for Section 9 as renumbered. Private property shall not be taken or sold for the corporate debts of public corporations, but the Legislative Assembly may provide by law for the funding thereof, and shall provide by law for the payment thereof, including all funded debts and obligations, by assessment and taxation of all private property not exempt from taxation within the limits of the Territory over which such corporations respectively have authority.

Mr. Carpenter, of Lewis & Clarke: I move the adoption of a substitute

The motion was seconded.

The Chair stated the motion.

Mr. Carpenter, of Lewis & Clarke: We do not need both the words "public" and "municipal" as adjectives qualifying the word corporations. "Public" is the larger word and includes counties, cities, towns, villages and all other corporations instituted for the purpose of public government and the management of some part of the state affairs or some subdivision of the state rather. "Municipal" is sometimes used in its broadest signification to cover everything; but courts now, as I understand it, are often limiting its meaning, perhaps I might say generally, to incorporated cities, towns and villages. If the word "public" is used the word "municipal" is unnecessary, because it is included fully within the meaning of "public" as applied to corporations. Now, I think this section ought to be stricken out, or we ought to go further. It looks like a step towards repudiation to leave it where it is. If the creditor of any municipal or public corporation in the Territory cannot see a way of collecting his money from the corporate company, he will wonder how he can get it at all. Laws may be passed for assessment and payment, but they may be repealed, or they may be defected Of course, then they would be part of the contract, but it would make it appear safe to all if a way for the payment was assured. Take the city of Helena, which will have a large debt, and large public debts, but no creditor in the world will want to buy the sewers that are being put in today. He would have no security in them. I think a clause should be put in this constitution that those debts if not paid by the corporate property should be paid by assessments and taxation of all private property within the limits of the Territory over which that public corporation has authority. For instance, the city should have the authority to levy assessments and taxes on private property within its limits, so that the people of Missoula will feel assured that Montana does not propose to have its credit impaired in any way or in any subdivision of the Territory.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Carpenter) and a vote being taken the same was declared carried.

There being no further amendments to Section 8, the Clerk read Section 9, as follows:

"Sec. 9. The rate of taxation of real and personal property for state purposes in any one year shall never exceed (3) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to one hundred million dollars ($100,000,000) the rate shall not exceed two and one-half (2½) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to three hundred million dollars ($300,000,000) the rate shall never thereafter exceed one (1) mill on each dollar of valuation; unless a proposition to increase such rate, specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election."

There being no amendment to Section 9, the Clerk read Section 10, as follows:

"Sec. 10. All taxes levied for state purposes shall be paid into the state treasury, and no money shall be drawn from the treasury but in pursuance of specific appropriations made by law."

Mr. Loud, of Custer: I desire to offer an amendment.

The President: The gentleman from Custer offers an amendment to Section 10

The Clerk read as follows.

Amend Section 10 by adding the following: "The Legislature shall provide for an annual tax, sufficient to defray the estimated expenses of the state for each year, and whenever it shall happen that such ordinary expense of the state for any year shall exceed the income of the state for such year, the Legislature shall provide for levying a tax for the ensuing year, sufficient with other sources of income to pay the deficiency of the preceding year, together with the estimated expense of such ensuing year."

Mr. Loud, of Custer: I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

Mr Loud, of Custer. The reason I offer this is that in the Executive Department we have adopted a section that provides that the Governor shall transmit an estimate of the expense of the Government for the year, and also that this provides that there never shall be any surplus in the treasury; at the same time we have a surplus of a little over one hundred thousand dollars As far as Custer County is concerned, our tax levy is now 28½ mills. For that reason, we do not feel like contributing anything to allow it to remain idly in the state treasury, and this amendment that I have offered is a copy verbatim from one adopted by the state of Texas last year. They had a surplus in their state of two millions of dollars, and they found it necessary to convene the Legislature in an extra session to dispose of the surplus, and also to prevent its occurring a second time, and they adopted this amendment.

Mr. Collins, of Cascade. This is based on the policy that the Legislature will levy a tax for each fiscal year upon an estimate, but that the rate shall not be any more than is specified in this section, unless it is submitted to a vote of the people. Under the amendment offered by the gentleman the rate can be any amount the Legislature may see fit. So that I think the section as it stands is better than the one offered.

Mr. Hershfield, of Lewis & Clarke: I beg to suggest to the gentleman from Custer that he is guilty of a slight error, probably unintentional, but the surplus in the Territory now at present is about $36,000 or $37,000 dollars, instead of $100,000; and furthermore, this matter has been given considerable attention by the Committee on Finance, which I have the honor to serve on, and we have after due and careful deliberation of this matter—it was not upon a moment's notice, but we studied this matter, and we came to the conclusion to suggest the adoption of this section for the financial interests and good of the state, and I think it would be wise if we adopted the section as recommended by the Committee on Finance.

Mr. Collins, of Cascade, asked for the reading of the amendment again.

The Clerk read the same for the information of the gentleman.

Mr J. R. Toole, of Deer Lodge: The Clerk read this as an amendment to be added to the section. Is that an amendment to be added, or is it a substitute for the section?

Mr. Loud, of Custer: The intention is to add that to the section.

Mr. Collins, of Cascade: I do not see any objection to incorporating that in this article, but I should think it should be a new section. It would make that section very long, and it is a subject matter different from the matter treated in the section already; so I think if it is incorporated it should be in a new section. I move to amend that far, that instead of incorporating it in this section it be made a new section.

Mr. Loud, of Custer: I will accept the amendment.

The President: This amendment if adopted will constitute a new section to be numbered 11, and the other sections will be renumbered to correspond.

Mr. Middleton, of Custer: I am not opposed to the proposition, or the amendment, but it occurs to me that it is somewhat inconsistent with the section that we have just considered; that is, that Section 9, or Section 10, I believe as renumbered, seems to provide a limitation. Then this proposed new section seems to take off the curb and leave on the limitation; and if this new section was made to relate back or referred to the limitation in the section that is here, it would be all right; but there certanly should be some sort of limitation. It seems to me that considering all things these two sections are inconsistent. I may be mistaken about it, but I have heard it read two or three times. My impression is that Section 9, or 10, I think it is, fixes a limitation by which taxes cannot be levied, and that the proposed section permits a tax to be levied according to an estimate without limitation. Now, if that is true, the two sections are inconsistent, and I should not be in favor of the proposed amendment, because I believe that the levying of taxes should be held within some sort of reasonable bonds. The Legislature is disposed as a rule to be governed by about what money it has in the treasury. When the Legislature convened last winter there was about $130,000 in the treasury, and it is particularly apparent that that Legislature governed themselves accordingly, for there certainly was a good deal of extravagance of that Legislature, and as the gentleman suggests, we have today about $36,000 dollars in the treasury, when in the early part of last January there was over $130,000. If that proposed section, as I understand it, takes off this limitation, I certainly should be opposed to it.

The Chair put the question on the amendment of the gentleman from Custer (Mr. Loud), and a vote being taken the same was declared lost.

There being no further amendments to Section 10, the Clerk read Section 11 of the printed proposition as follows:

"Sec. 11. Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

There being no further amendments to Section 11, the Clerk read Section 12 of the printed proposition as follows:

"Sec. 12. No appropriation shall be made nor any expenditure authorized by the Legislative Assembly, whereby the expenditure of the state during any fiscal year shall exceed the total tax then provided for by law and applicable to such appropriation or expenditure, unless the Legislative Assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in Section nine (9) of this article, to pay such appropriations or expenditures within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state or assist in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years."

There being no amendment to Section 12, the Clerk read Section 13 of the printed copy.

"Sec. 13. The State Treasurer shall keep a separate account of each fund in his hands, and shall at the end of each quarter of the fiscal year report to the Governor in writing, under oath, the amount of all moneys in his hands to the credit of every such fund, and the place or places where the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. The Governor, or other person or persons authorized by law, shall verify said report and cause the same to be immediately published in at least one newspaper printed at the seat of government, and otherwise as the Legislative Assembly may require. The Legislative Assembly may provide by law further regulations for the safe keeping and management of the public funds in the hands of the treasurer, but notwithstanding any such regulation, the treasurer and his sureties shall, in all cases, be held responsible therefor."

There being no amendments to Section 13, the Clerk read Section 14 of the printed copy as follows:

Sec. 14. The making of profit out of public moneys, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony and shall be punished as provided by law; but part of such punishment shall be disqualification to hold public office for a period of not less than ten years."

There being no amendment to Section 14, the Clerk read Section 15 of the printed copy. (Should be the section above quoted on account of renumbering of sections.)

Mr. Middleton, of Custer: I move to amend Section 15 by striking out the last four words on line 3 and all of line 4.

The motion was seconded.

The Chair stated the motion.

Mr. Middleton, of Custer. I do that because I believe that a man who is convicted of felony should never be again qualified to hold public office in the state The words stricken out are "for a period of not less than ten years."

Mr Hershfield, of Lewis & Clarke. I hardly know as one of the Committee on Finance how that crept into our report. It must have been a mistake. The intention of our committee was to eliminate that section and to report a section such as is suggested by my friend from Custer. Therefore I think it is quite proper the gentleman's amendment should be adopted.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Middleton) and a vote being taken the same was declared carried.

There being no further amendment to Section 15 (as renumbered) the Clerk read Section 16 of the printed copy as renumbered.

"Sec. 16. The Governor, Secretary of State, State Treasurer, State Auditor and Attorney General shall constitute a state board of equalization; and the board of county commissioners of each county shall constitute a county board of equalization The duty of the state board of equalization shall be to adjust and equalize the valuation of the taxable property among the several counties of the state. The duty of the county boards of equalization shall be to adjust and equalize the valuation of the taxable property within their respective counties. Each board shall also perform such other duties as may be prescribed by law."

There being no amendment to Section 16, the Clerk read Section 17 of the printed copy as renumbered.

"Sec. 17. All property, except as in this section provided, shall be assessed in the county, city, town, township or school district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state shall be assessed by the state board of equalization, and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and school districts."

There being no amendment to Section 17, the Clerk read Section 18 of the printed copy as renumbered:

"Sec. 18 The word property, as used in this article, is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation, represented by such stocks, is within the state and has been taxed."

There being no amendment to Section 18, the Clerk read Section 19 of the printed copy as renumbered

"Sec. 19. The Legislative Assembly shall pass all laws necessary to carry out the provisions of this article."

Mr. Warren, of Silver Bow: I move that proposition No. 27, General File No 26, with the exception of Section 4, be now placed upon its final passage

The motion was seconded.

The Chair stated the motion.

Mr. Chessman, of Lewis & Clarke: If it is not too late I would like to offer an amendment to Section 9 or Section 10 as renumbered. The limitation upon the last amount mentioned is about one mill. Now, at such time as the assessed valuation will be $300,000,000, the interests of the state will be much larger than they are now, and the limitation as placed here has placed the amount the same as it is at the present time. I move to make that one and one-half mills, instead of one mill.

The motion was seconded.

The President: The gentleman from Lewis & Clarke offers to amend in line 6 of Section 10 as renumbered, by striking out the word "one" and inserting in lieu thereof "one and one-half."

Mr. Hershfield, of Lewis & Clarke: Would it not be wiser if we were to allow that to remain as it is, one mill, and if a contingency arises where the expenditures of the state will exceed the limitation, why, then let the Legislature provide for it, which they would have the power to do by the deficiency in the succeeding section. I think it is wise to allow this limitation to remain in the section. It is always better to provide for limiting the opportunities of creating and encouraging indebtedness, and if they have no sufficient funds and it may sometimes be necessary, why, the Legislature can liquidate it by a deficiency.

Mr. Chessman, of Lewis & Clarke: The limitation up to that amount is very liberal. For instance, there are $299,000,000 on which the limitation is two and one-half mills as provided in this section, but $300,000,000 has a limitation of one mill. Now, I maintain that one mill is sufficient. Of course, the Legislature does not have to assess the full amount. It is discretionary with them, and the limitation seems so small that it ought to be increased to a larger amount. I think it is a very small increase anyhow, and it is a little disproportionate as compared with the limitation of a lesser amount.

Mr. Collins, of Cascade: I have no doubt that if you levy ad valorum taxes to defray the expenses of the state that a one mill tax, when the property is valued at $300,000,000 will not be nearly enough to cover the expenses of the state; but if the section was to be amended to suit your view of the case I would reduce it to one-half a mill, in order to compel the State Legislature to collect the taxes in other directions; levy as small an ad valorum tax as possible, and collect as much as possible from license taxes; not on legitimate occupations, but on other business that are now in the state and that will hereafter come in the state. I think very large sums of money can be collected in that way, and so far as the power of the Legislature to collect ad valorum taxes is concerned, I would, speaking individually, rather reduce than increase it.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Chessman) and the same was carried on a division by a vote of 38 in the affirmative to 13 in the negative.

The President: The question now is upon the motion of the gentleman from Silver Bow (Mr. Warren) that Proposition No. 27, with the exception of Section 4, be placed upon its final passage.

Mr. Rickards, of Silver Bow: I would rise to a point of order. I would like to ask how we can proceed to place this bill on the final passage, and omit any part of it, that by vote of this house has been adopted.

The President: As the Chair understands it, the motion was to place upon its final passage all of that portion of Proposition No. 27, except Section 4. The Chair is of opinion that the motion is in order, and that the convention may adopt everything they desire in the proposition, or reject it if they please, as the case may be.

Mr. Rickards, of Silver Bow: That is not my point of order, with all due respect to your decision, Mr. President. My point of order is that we have adopted Sections 4, 5, 6, etc., and now they come up for final passage, on a motion to adopt all except a portion of it. My point of order is, can a portion of that be adopted and the remainder ignored without reconsideration of the vote by which it was adopted.

The President: The Chair understands that we have only adopted one or two sections so far. We passed over part of it. Section 3 was adopted by a vote of the convention, but the Chair is uanware that any other section has been adopted except Section 3. Section 4 has also been adopted, but it has been ordered to be printed. The Chair will get the sense of the convention on this by putting the motion. The motion is to place Proposition No. 27, with the exception of Section 4, upon its final passage.

The Chair then put the said motion, and the same was declared carried on division by a vote of 37 in the affirmative to 22 in the negative.

The President: Proposition No. 27, with the exception of Section 4, will now be placed upon its final passage.

The Clerk will call the roll.

Mr. Middleton, of Custer: I would like the indulgence of the convention a moment to offer an amendment to Section 17 as it is now numbered. I think there will be no objection to it.

The President: The gentleman from Custer desires unanimous consent to offer an amendment to Section 17 as it is now numbered. If there be no objection, the gentleman will be allowed to read his amendment.

Mr. Middleton, of Custer: In Section 16 of the printed copy, which I understand is Section 17 now, after the words "equalization" in line 4, I wish to insert the words "in the manner prescribed by law." It seems that there is no provision as to what rate or in what manner the boord of equalization shall assess railroads and railroad property. The first part of the section provides that it shall be assessed in the manner prescribed by law, and I think that the same thing is true as to railroad property.

The President: Is there any objection to the consideration of this amendment? It requires unanimous consent.

Mr. Marrion, of Missoula: I object.

Mr. Middleton, of Custer: I think there ought to be some provision by which that would be ingrafted.

Mr. Burleigh, of Custer: Mr. President, is a motion in order?

The President: No motion is in order except by unanimous consent.

Mr. Burleigh, of Custer: I will ask unanimous consent to make a motion. I move the proposition be laid on the table.

The President: The motion is not in order.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Warren).

The Clerk called the roll for the ayes and nays on the adoption of Proposition No 27, and the vote stood as follows:

Ayes: Bickford, Browne, Buford, Burns, A. J.; Burns, E ; Callaway, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Courtney, Craven, Dixon, Durfee, Dyer, Eaton, Field, Gaylord, Gibson, Goddard, Graves, Hammond, Hatch, Hershfield, Hickman, Hogan, Joy, Kanouse, Kennedy, Knowles, Luce, Maginnis, Marrion, Marshall, Mayger, McAdow, Muth, Myers, Ramsdall, Reek, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, Jos. K ; Toole, J. R ; Warren, Whitehill, Winston, Witter, Mr. President—54.

Nays: Aiken, Burleigh, Burns, A. F.; Cardwell, Gillette, Hartman, Haskell, Hobson, Joyes, Kohrs, Loud, Middleton, Mitchell, Parberry, Watson—15

Absent. Brazleton, Breen, Bullard, Knippenberg, Robinson—5.

The President. The motion prevails and all of Proposition No. 27, with the exception of Sec 4, which has been deferred for further consideration, is adopted and becomes a part of the constitution of the State of Montana. It will be referred to the Committee on Enrollment.

Mr. Rickards, of Silver Bow: If in order, I move that we do now resolve ourselves into a Committee of the Whole for consideration of File No. 16, Proposition No. 17, being the report of the Committee on Education.

The motion was seconded.

The Chair stated the motion

Mr. Rickards, of Silver Bow: I wish to say that my reason for making this motion at this time is that I have a sick child lying at home, and may be summoned there at any moment, and I would like this matter to come up and be discussed in order that it may be disposed of in case I am compelled to ask for leave of absence.

Mr J. R. Toole, of Deer Lodge: I move to amend by taking up the consideration of General File No 17, Proposition No. 18, Article on State Institutions and Public Buildings

The President. The Chair entertained a motion similar to that a day or two since, but is of the opinion that it is not in order, for the reason that they are entirely separate and distinct propositions, and one cannot be considered in the nature of an amendment. The question now is upon the motion of the gentleman from Silver Bow (Mr. Rickards).

The Chair then put the said motion of the gentleman from Silver Bow, and a vote being taken the same was declared carried.

The Chair called Mr. Kanouse of Meagher to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Kanouse, of Meagher, in the Chair.

The committee was called to order.

The Chairman: The Clerk will read Section 1 of Proposition 17.

The Clerk read as follows:

"Article on Education. Section 1. It shall be the duty of the Legislative Assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools."

There being no amendment to Section 1, the Clerk read Section 2, as follows:

"Sec. 2. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted to the state by the general government, known as school lands, and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises or bequests made to the state for general educational purposes."

Mr. Kennedy, of Missoula: Mr. Chairman, Resolution No. 8, relating to school lands, was introduced by the gentleman from Gallatin, which is to be considered in connection with this proposition. I move that it be inserted or added to the last line of this section, so that it will read as follows:

"Provided that none of the lands granted by Congress to the state of Montana for the support of common schools, shall ever be sold or granted or disposed of in any manner except by lease, nor shall any moneys arising therefrom be used for any other purposes than for the support of common schools of the state."

The motion was seconded.

The Chair stated the motion.

Mr. Rickards, of Silver Bow: I would like to hear from the gentleman who moved the adoption of this resolution before time to advance any argument that might be advanced in favor of it is had.

Mr. Kennedy of Missoula: Mr. Chairman, I believe that it is for the best interest of the rising generation that this resolution as introduced by the gentleman from Gallatin should be adopted and inserted as a part of this constitution. We have in the county of Missoula many valuable sections of school land, and there is one section to which I might particularly refer in the vicinity of the town of Missoula, a section of land which I believe today is worth at the least calculation one hundred thousand dollars, and that section of land would provide more revenue if leased; that is, if let out as an addition to the town of Missoula, and the lots leased for building purposes, than what the entire revenue of the county of Missoula amounts to today with a four mill levy tax, to say nothing about other enormous sections throughout the county. They are just as valuable for agricultural purposes, though not as well or centrally located for building purposes; and in view of this section of land in the immediate vicinity of Missoula, instead of being worth one hundred thousand dollars, will be worth one million dollars, and without taking up any further time or presenting any further arguments, I am willing to submit this matter to the committee.

Mr. Luce, of Gallatin: I offered that resolution, and will state briefly my reasons for it that in some of the states of this Union that have the right to sell school lands they have disposed very freely of their lands and found large accumulations of money on their hands, and appointed, as I understand, committees known as Loan Committees, and those committees, or commissions, rather, have frequently made loans in the state and have loaned on bad security, and the money has been lost forever. I undertake to say that no officer of any Government can get away with real estate, and it is as good an investment as the public schools of Montana can ever have. Now, you take some of these mountain lands, when they cannot be sold or have an appreciable value per acre perhaps, in time they may be leased for grazing purposes and will bring about as much money yearly as they would bring per acre if put up for public auction. There are very few of the school lands today which if put up at auction would bring ten dollars an acre, but some of them will be choice lands that will be sought for by speculators and I think we can afford to hold those lands and take the money that will arise from leasing them in various manners, and apply that to the support of the schools, instead of selling these lands at low prices, and then in order to get your investment perfectly secured lending your money out at a very low rate of interest I think, considering the danger that always surrounds large sums of money in the vaults of the state and other liability to be diverted or lost in some manner other than that for which they were intended to be appropriated—considering all these things, I think it is safer for us to keep the lands forever and support our schools from the revenue derived from leases.

Mr. Burleigh, of Custer· There is another consideration which enters into this subject. Now, I find that by looking at the Act of Congress that there have been given for the purpose of supporting public schools five million acres of land; for university, 46,000 acres; and for agricultural college, 140,000 acres; for school of mines, 100,000 acres; for state normal schools, 100,000 acres; reform school, 50,000 acres; deaf and dumb asylum, 50,000 acres; and for educational purposes other enormous amounts of lands. Now, so far as the danger of leasing the land is concerned, there is no question, but if these lands remain where they are there is no danger of their being stolen. It requires a little water brought in contact with the land in order to make them valuable even for mining purposes. Now, the consideration which I wish to impress upon the convention is this, that if these lands are not disposed of, they are not subject to taxation, and here are five millions and a half of acres of land that are to be withdrawn from taxation, and the state is to get no benefit from that; whereas, if they are sold at the price named in the Act of Congress donating them, those lands will become subject to taxation, so far as they are sold, and it will add to the revenue of the state. If they are not sold there will be no such revenue derived from them, and we have to rely upon other methods of taxation. There will be trouble in providing for a safe-keeping of this money. There is no danger of its being stolen and carried off with anything like wisdom in the investment of it. I will venture to say if it is turned over to the state of Montana, if the state of Montana receives it and becomes responsible for it that it will not be stolen. I do not blame my friend from Gallatin County for being suspicious of men, because there has been a great deal of public money stolen, but that is where it was not so well guarded as it should be; and with his assistance, and the assistance of some others here to guide and direct, I have no doubt that all we will have to pray for will be for strength to carry the thing into effect. Hence, I say I think it is unwise to incorporate into this constitution a provision which will prevent the distribution of these lands and the placing them in the hands of private parties where they can become the subject of taxation Now, I desire to call the attention of the members of this convention to this consideration, which it seems to me is a very important one, a practical one, and one that involves a very great deal of interest to the state at large I will not consume the time of the convention in adding anything more than calling the attention of the convention to the views which I have expressed here.

Mr. Bickford, of Missoula: I desire to offer a substitute for the resolution

Mr. Rickards of Silver Bow· Your committee predicted and it fully expected a controversy on this question The advisability of adopting this resolution, though it had not been referred to this Committee but referred to another committee, was duly considered, and I wish that I could have prevailed upon Major Maginnis to take my place in this committee on the floor of this house and present connectedly the arguments that we went over thoroughly in considering this question I want to call your attention before mentioning any other facts to Section 12 of this proposition. "The funds of the State University and of all the other State institutions of learning, from what ever source accruing shall forever remain inviolate and sacred to the purpose for which they were dedicated The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the State against loss or diversion." Now Mr Chairman and gentlemen of this committee, I want to say for some of the members of the Committee on Education, and for myself, that I went into the committee room, if I had any leanings, leaning towards the idea of leasing and not selling any of our school lands; but the more we went into this subject the more impracticable did it seem. We invited into our committee room the known champions and recognized champions of this theory of leasing public school lands, and after hearing all of the arguments that they had to advance, your committee came to the conclusion that the only safe and practicable method by which this question could be settled would be to leave it in the hands of the Legislature, where your committee have recommended it. Now, as has been said by Judge Luce, under the Enabling Act none of these school lands can be sold for less than $10 an acre. The Enabling Act also provides that none of these school lands can be leased for a longer period than five years, and no larger quantity than one section to one person or corporation shall be leased, so that I think you all must see at a glance that the idea of leasing is an impracticable one. No improvements could be made of the lands; no one would take them on any such lease. Some of the friends of this measure said, let us trust to the magnanimity of Congress to repeal this law and give to us a longer lease, but we considered that we were trusting a very uncertain quantity if we leave this measure for repeal in the hands of Congress. We have nothing to do with what Congress may do. All that we have to do in considering this question is to consider what we may do with the restrictions thrown around it by this Enabling Act. Now Mr. Chairman, I want this Committee, and I believe that they will too, to duly consider one feature of the leasing system, which was dwelt upon and emphasized in the committee room, and that is this, that we enter upon, if we adopt that system, an untried experiment. I have heard it asserted that some of the states have tried it, but no one member of this committee has been able to put his hands upon a document that would verify that statement. Now, if we enter upon the leasing system, we enter upon, as has already been said upon this floor when we were considering another matter, a species of landlordism that is fraught with danger to the commonwealth. In the absence of a system of irrigation, I would like anyone to point out intelligibly how a system of leasing can be adopted by this state. Now in view of these facts presented to you in this dissilatory manner, I submit to you that in the adoption of this resolution that has been presented as an amendment you will be tying the hands of the legislature so that if at any time in the future you find that a tract of land can be sold for the minimum price or more, you have tied their hands so that they cannot do it. And I would also ask you to consider how we are to obtain a fund for present needs if we are not to sell this land as the legislature will prescribe. Now I believe, and I predict that after all the argument has been or will be advanced in favor of the adoption of this resolution, or one of like character, that the sober wisdom of this committee and this convention will be that we are to leave it in the hands of the legislature where it properly belongs, so that they may do with it as their judgment shall dictate.

Mr. Kennedy of Missoula: Before this gentleman sits down I would like to ask him a question. This resolution that the gentleman from Gallatin makes provision that none of the lands for the support of common schools can ever be sold. I would like to ask the gentleman how the common schools of Montana are supported now. Wouldn't we be on the same footing as we are now?

Mr. Rickards of Silver Bow: Oh, well, we all understand how the common schools are now. but as a gentleman has said, Mr. Chairman, this generation does not want to assume the obligations of coming generations.

The Chairman: The gentleman from Missoula, Mr. Bickford, offers the folowing as an amendment to the amendment of Mr. Kennedy. "Resolved that the lands granted by Congress to the state of Montana for the support of common schools, and for universal purposes, may be sold or leased in the manner and at such time as may be prescribed by law, provided that none of such lands shall be sold for less than ten dollars an acre."

Mr. Bickford of Missoula: I move the adoption of the amendment.

The motion was seconded.

Mr. Maginnis of Lewis & Clarke: I would call the attention of the gentleman to the fact that that is what this bill prescribes.

Mr. Bickford of Missoula: I simply put the amendment so that the matter might properly come before the convention.

Mr. Parberry of Meagher. I am opposed to offering any of these lands for sale and briefly will give you my reasons. The gentleman remarks that he wants to know how we could get along if we did not sell the land. I can very easily figure out how we can get a great deal more money by not selling than we can by selling. In the first place the land was given to this state with certain restrictions. One is that they shall not be leased longer than a term of five years; another is that they shall not be sold for less than ten dollars Now, nearly all the school lands in the state of Montana can be leased for something, and it is very easy for the legislature to make it the duty of the treasurer of each county to offer to the highest bidder the two sections in each county, the sixteenth and thirty sixth sections, giving bond of security for the payment of his annual wealth, and pay it to the treasurer as he pays his tax. Then we have no expense except the little expense of the treasurer's collecting the rent, and he is required to turn it over to the territorial treasurer. Now, here are all those sections that can be leased for twenty five dollars, fifty dollars, one hundred dollars, or two hundred dollars, that cannot be sold under the provisions of this Enabling Act, which would be a source of revenue. Another thing is, if the land could be sold, money is now worth 15, 18 and 20 per cent per annum. The money could be turned around and put out at six or seven per cent under restrictions here, and if offered for sale there are only a few sections that could be sold for ten dollars and more Now I have maintained that it would be much better to restrict the sale of the land to sections I know something about this matter, because I have had some experience with it in my section of the country. All through this grazing section in the eastern portion of the country most of the water has been appropriated, but through these sections in certain places there are springs and small streams of water and if you sell forty or fifty acres to any person, or lease it, that will cover all the water and timber, so that the balance of the section is not worth anything to anybody. But it can be leased by sections, and the revenue coming in every year turned over by the county treasurer to the territorial treasurer, so that you can handle it. Now you cannot sell a section of land and take the money and use it; you must put it out, and can only use the interest that comes from that section of land. You can lease it for more money than you can get interest on the money if it is sold.

Mr. Craven of Lewis & Clarke· I have heretofore taken up so little of the time of this convention that I have no hesitancy now in asking your indulgence for a few moments on this proposition. The law implies that one eighteenth part of the area of the territory shall be devoted to the common school, namely, sections 16 and 36 in each township at the time of our admission as a state, provided at that date those sections have not been previously sold or disposed of, and if they had been sold or disposed of other sections are to be selected in lieu thereof under the laws and regulations prescribed by the legislature. This, together with five per cent of the net proceeds from sales of lands made subsequent to the date of our admission as a state constitute the dowry of the common schools. The number of acres thus given to the common school, and also to the various educational institutions of the state have been correctly given. The common school land expressed in acres would be 5,120,000; State University 72 Sections, 46,080 acres; School of Mines 100,000 acres, State Normal School 100,000 acres, State Reform School 50,000 acres; Deef & Dumb Asylum 50,000 acres; and Agricultural College 140,000 acres. Now what is the condition and character of these lands—and I take it that this convention, or any department of government which it institutes must at leost approximate a definite idea of their character and condition before it can intelligently commit the state for years to any definite and unvarying systems for their management. The committee on Education in one of the conventions in the Dakotas saw fit to hire a hall and to hear the arguments of all those who wished to be heard on the question of leasing their school lands, or of selling them; And if they had any difficulty there at all, where it was already known that the school lands as a rule were all perfectly level lands, accessible from all the points of the compass, and watered by the reservoirs in the clouds—if they had any difficulty there at all, you may have some idea of the perplexities which confront you here in a country whose topography is as variable as ours is, where the roads follow the mountains, and the meanderings of water courses instead of the artificial section lines of the surveyor, and where the fall of the land is so imperceptibly connected with the matter of water right. The few weeks to which our conference is necessarily limited and the means at hand will forbid the accumulation of the statistics and facts which would be so desirable at this time, and it remains for future legislation to provide that all of these lands be selected and mapped out, and that the official report be followed as to every subdivision thereof, showing their condition and character, accessibility to roads and water courses, and all the facts entering into their conditions and the valley. As it is known that the land granted to the various educational institutions have been selected except the university lands These 72 sections were selected a few years ago from the best lands of the state which were then unappropriated. The selected list was recently approved by President Harrison and now appears on the official file in the Governor's office below; and as to the public school lands it is impossible to tell very much about many of them from the fact that only about 25 per cent of the territory has been surveyed. One of the most experienced civil engineers in the city informs me, at a rough estimate, that that amount has been surveyed and that it did not include the mountains, except as the mountains had been surveyed at the instance of some one in getting mineral patents on mineral locations. Now with reference to leasing the lands I will state that when my labors first commenced on this committee I was in favor of the leasing system, exclusively, but the more and more consideration we gave it the more and more the plans seemed infatigable as an exclusive one. And whence rose the leasing system? In this country above all others, the general sentiment is against landlordism, and the general government in the distribution of its land has sought to give out in small tracts to the actual settlers. The idea had its origin not in the fact that landlordism has any desirable features, but from the fact that most of the states had disposed of their school lands in a very injudicious manner. The state of Iowa sold her lands at a very small figure The state of Texas I am informed sold lands for less than even one dollar and a quarter per acre, their being no limit on the price, that state not having derived its lands from the government, and so general has been its mismanagement, that when Congress came to pass this Enabling Act it threw a safe guard around the school lands of the state of Montana when it provided that no lands should be sold for less than ten dollars an acre, and that they might be leased for periods of not more than five years; and as Congress did not confine the state to one system or the other, this convention ought not to confine the matter to one system or the other. As has been frequently mentioned the value of land in this country amounts to nothing unless you can get water on it. Will the state build bridges, and make appropriations for the water for its land? It is known that no species of property requires such constant supervision and control as the water rates. In many parts of the country I have noticed that it takes about two men and a shotgun to each ditch, and it is known among lawyers everywhere that no water right is worth anything until it has been christened by at least one law suit. If we go into the water right business, it will be necessary for us to pay for the right of way over the private land of owners to maintain these ditches, whenever they are infringed upon. This would open up a field for jobbery, the evils of which in my opinion would be worse than all the evils of landlordism or rack rent. On the other hand, let the tenant make the first appropriation of water; when you come to lease again, all the waters of the creek will be appropriated. Nobody wants this school tract unless they can get the water right with it. The first tenant refuses to sell his water right for love or money. The consequence is that when you come to lease the land a second time, in your endeavor to preserve this land for posterity you have practically given it away to the man who is fortunate enough to get the first water right. Again it is a principle that the landlord rents a house or a tract of land, he impliedly gives a right away of the ingress and egress, and so it would be necessary for us to go into the road business and way for roads over the private lands of others. If we do not then the tenant gains and that the expiration he not only owns the water right but the private way as well. Then in reference to the collection of rents. It is stated on all sides that the long term is the only practicable one. The rents then cannot be collected in advance; they must be paid yearly. Upon what shall they be a lien? Not upon the lands, for they belong to the state; not upon the lease hold of the tenant in the land to any practicable purpose, for without the water right this, in many cases, would sell for much less than the rent due. Suppose he has any property; suppose he sublets or assigns his lease and leaves the country. I shall hesitate long, Mr. President, before my voice shall promulgate the doctrine that this state must derive its only benefits from these school lands to the leasing of the school lands exclusively It means landlordism, it means tenantry, it means notice to evict; it means eviction for nonpayment of rent, it means that the officers of the law shall have heaped upon them the odium that was formally heaped upon the Jewish tax gatherers. Now, I cannot indulge in the hope which seems to come to some with so much assurance, that Congress will readily enlarge the time for which we may lease. Perhaps it will, perhaps it will not. The constitution is no field for experiments and I give it as my opinion for all it is worth that it is poor statesmanship for us to insert a clause in the constitution and commit the state for all years to come to a policy whose practicability is conceded even by its warmest supporters to depend upon a hope which is born of a desire for certain action on the part of the national congress in the future. It seems to me that the best way is to leave this as the committee returned it—leave the matter with the Legislaure. Few of these lands will now sell for ten dollars an acre. Many of them will not sell for that for years Some of them will never sell for it. Let it accommodate the laws to the condition and emergencies as they arise, let it lease the lands which it can not sell and if the system proves burdensome or impracticable it can abandon it It seems to me that the common people can well be trusted with this matter. No sentiment is dearer in the hearts of the American people than the education of their children, and the establishment of an educational system, whose streams of knowledge will flow out among the people for generations yet unborn, transcending in value the streams crossing these first fields, or the gold in your mines The fact that none of these lands can be sold for less than ten dollars an acre, and the further proviso that if leased they may not be leased for more than five years, is sufficient guarantee for the future. If all the lands should be sold this would mean a perpetual endowment of fifty million dollars, which put out at four per cent per annum would be a yearly income to be distributed among the schools of two millions of dollars, and the thought is not unworthy in my judgment that we owe as much to the present as we do to the future. It is enough for the pioneers to suffer the deep privations of pioneer life without continuing to support the schools by a direct tax, when they have at least the opportunity to appropriate a part of that from the national bounty It is the school houses and school grounds that cost. It is this university building and the buildings for the various state institutions, with their equipments and furnishings that cost, and the people of the future, without deriving a bit of benefit from the school lands will not pay as high a tax as the people now are paying, have been paying, and will pay for years to come. In my judgment we should try no experiment in the constitution. We should hold fast to that which we do know. We should be willing to back the common people in this respect and rest assured that they, meeting the conditions and emergencies as they arise, will guard their school interests, sacred as they are to them, much more sacredly than this convention can do it for them, and a great deal more wisely. (Applause)

Mr. Ramsdell, of Missoula: I feel deeply interested in this question. In the county which I represent there are something like twenty sections of school lands, and I will here say that I am not committed to either system. There are some arguments that can be advanced on both sides, and an argument of the leasing system which holds out in the future a grand system of building up an almost unlimited fund for the maintenance of common schools and universities I acknowledge is the lawful one; but at the same time it seems to me that it is fraught with some uncertainties and some dangers. On the other hand, I believe that, as the gentleman who preceded me has just remarked, that they hold a duty to the present generation as well as to the future, and if we take into consideration the fact that it has been the policy of this government to develop this country by land grants producing railroads and other streams that had developed the country, I believe we will admit at once that the duty we owe the present generation is an apparent one. The section of country which I represent is not very large. Nearly all of the valuable land is taken. There are some fourteen sections of university land in one body. It is the finest land within the limits of the Flathead country. The country, as I say, being small and having but little capital, the great struggle of the day is to maintain all the settlers of that section in business with no market. Now, if this country was settled up as quickly as possible it would add an additional incentive for a railroad or for the expenditure of capital and would really aid the settlers more, who occupy the country, in securing a market for their products, and it would really redound to the interest of all the people of that country. Now, I say that I am not committed to either system. If the leasing system can secure an immediate settlement, or a settlement in the near future, of these lands without any serious objections, I am in favor of it; but I do pretend to say—(interrupted).

Mr. Maginnis, of Lewis & Clarke: I would like to ask the gentleman for information, what is his opinion of the practicability of settling up those lands by the leasing system?

Mr. Ramsdell, of Missoula: I was just going to remark that it was impracticable on a five-year leasing system There is no man, in my judgment, that would be willing to take this land, fence it, improve it and dig wells and make other necessary improvements for a five-year lease. It is not long enough to warrant the necessary outlay.

Mr. Callaway, of Madison: I desire to answer the question. If the method of improvements be simply a matter of contract, and moreover, with a five-year's lease as a matter of contract, would it not be putting each lease on a par?

Mr. Ramsdell, of Missoula: Those questions, I do not think, can be answered until the final action of the committee in this matter. Now, I believe that there are arguments to be advanced on either side, but I would like to see this convention deliberate in the matter. I do not think there is any question that has come up before this convention that is in such an unsettled state as this, and that there has been so little experience with, and I hope that the action, whatever it is, will be cool and deliberate, and that the results in future years will bear us out in our action. It has been stated by the gentleman that just preceded me that there is some odious aspect of landlordism, and I believe that every American or every man that is identified with the interests of American institutions within these halls, have verified that statement It carries in its connection the idea of eviction, of forcible collectons, and I say that if we must build up an institution of landlordism that in the future years will overshadow all others, and that may boast of its hundreds of millions of dollars in the treasury at the expense of a tenancy, established throughout this country that is poor and needy and that will often be evicted from their homes and be made the creatures and subject to rack rent, I say that this interest had better be limited and never reach its proper state of improvement than to reach it at the expense of a tenantry and citizens of this country.

Mr. Marshall, of Missoula: There is a single suggestion that has not been made, and that is that this school land in this Territory is good for nothing in the world but the timber that is on it; that it cannot be leased unless you give the lessee the right to cut off the timber; and it would be worth nothing when the timber was cut off. It would sell now though with the timber on it for a very good price. I know a quarter section of land that is well timbered that is worth, or said to be, $25 or $30 or $40 per acre, but for leasing it is worth nothing So, if we say no land shall be sold, it seems to me it would not do. The lands ought to be classified. Some lands ought to be sold now, other lands ought to be retained; some lands ought to be leased, for they cannot be sold for any other purpose than for grazing purposes; and it does seem to me that the proper mode is in leaving it to the Legislature for a while, and let them sell what ought to be sold, and lease what ought to be leased, and retain what it is necessary to retain.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, the Chairman of the committee requests me as one of its members to dwell upon a few facts that were omitted. As my predecessor in the argument has said, I went into the committee freely disposed towards this leasing system, although from the first the idea of establishing a landlord and tenant system was somewhat repugnant to my opinion, but as we went on step by step, we saw further and greater objections to it. We considered it in almost every possible light First, we considered it from the standpoint of a purely leasing system; then we considered it as a system of selling half the land and leasing the other half, then of selling only a portion of the lands and forever retaining the rest. And, after fully discussing it in nearly all its aspects, and listening to arguments presented by the people generally from outside, some of them the ablest advocates of the leasing system, all of the committee, with the exception of one gentleman, whose opinions indeed are of very great weight, concurred in the report that we had better leave this whole matter to the Legislature. With the limitation of ten dollars an acre placed upon it by Congress, it operates as a considerable limitation. If all those lands could be sold, and none, I think, could be sold for less than that—if we could sell all those lands for thot price tomorrow, we could put into the treasury of the state $54,860,800, on which the interest at four per cent would be $2,194,432. The tax that the state would derive from such land at that price would amount at two mills on the dollar in each year to $109,721 Now, all these things want to be taken into consideration. Very likely some of those lands, not many of them perhaps, can be sold for ten dollars an acre; others cannot. Then we wonder if we should not provide that exceptional sections such as those mentioned by the gentleman from Missoula in the beginning of the debate where lands were near towns, and there they could be divided into lots and ground rents collected for them, should not be excepted in this constitution from the general proposition. But the more we thought of it, the more we came to the conclusion that the restriction made by the government was at least large enough to prevent the waster of the lands, and that we had better leave the whole subject to the Legislature and the people of Montana to deal with in the future as they saw fit Now, the gentleman asks, why should we not keep all those lands and all the revenues for posterity and why should we not maintain the public schools as we do now, by taxation upon ourselves. I think my friend, the Chairman of the committee, made that argument in saying that the burden of education added to all the other burdens of a new community—the openings of roads, the building of bridges, the erection of school houses, and all that kind of thing, comes pretty hard upon the first settlers, and upon their immediate successors, and we did all this for the benefit to future generations who ought to share somewhat in the burdens. Now, the first people of the Territory came from other states, and are generally educated, and what might be called the dark period of a state comes generally in the first or second generation—and if I had time I could dwell upon that to show the committee the reason why I have come to that conclusion—but you are familiar with the western states and know them. The bright men from all these states were the men who first went to new countries and to a new state. After that comes a sort of a period of Simerian gloom, as it were, and after that again, as the state grows in wealth and endows educational institutions, it proceeds to take rank in the front lines of enlightened communities. So that the hard period could bridge over the period generally succeeding the admission of a new state. That is the period that wants to be provided for, that is the period when a little money to build schoolhouses and to educate the people is worth more than at any other time; and while I have the very kindest regard for posterity, I would be very unwilling that this generation and the succeeding generation would take all these burdens upon itself and not see that they are equally distributed. Consequently, the committee having viewed this from almost every possible point of view, came to the conclusion that the wisest thing we could do would be to leave it to the Legislature of the state, only in the constitution provided that the funds should be so invested that the funds themselves and the interest should always be guaranteed by the state, and never could be diverted or wasted or put away. I would be very glad indeed to hear from other gentlemen of the committee.

Mr. Bickford, of Missoula: I desire to withdraw the amendment that I offered, as I see now the report of the committee fully covers the ground of the substitute which I offered to resolution No. 8.

Mr. Parberry of Meagher: I would like to ask a question of the gentleman from Missoula in regard to timber land. We will say here is a sixteenth section of timber land and admit it would bring $40, or $20, though there are comparatively few of these sections that you can sell for $10. Now, all this is worth is what you can get out of the timber. If you lease it to the highest bidder and give him five years, he certainly has a right to have everything on it, as he would pay as much for the lease as he would if he bought it; and I cannot understand to save my life how we are to get a direct advantage when we can only use interest here. Now, we know that the people in this Territory are paying ten, twelve and fifteen per cent for money, and to sell, as you can see, and put it out at four or five per cent per annum and only use the four or five per cent is something that I cannot understand.

Mr. Maginnis, of Lewis & Clarke: We do not provide that we shall sell or that we shall lease. We leave that to the people.

Mr. Clark, of Silver Bow: I am not going to make a speech on this subject, I simply want to make a few observations. I have no doubt the gentlemen who composed the Committee on Education have given this subject full thought, and they are gentlemen who are amply capable and qualified to do this, and I believe that they have arrived at the best conclusion that it is possible to arrive at, concerning this very important question. There are many difficulties in the way of leasing property that have been pointed out by these gentlemen who have preceded me. The difficulty of getting water upon the lands of this country is one of the greatest, and I believe that it will be a very difficult matter to induce any tenant to go upon these lands and improve them for the tenure of five years. I do not believe that you will get men to undertake to do that, and hence I believe that the time is too short. If it had been extended to twenty years or over it might be that this proposition might be considered the most advisable. But with the short lease to which we are restricted by the Organic Act creating this state, I do not believe the system of leasing is practicable, and upon general principles I am opposed to the system of leasing. So far as the future character of our citizens is concerned, we owe something to the state in securing a character of citizens that will be permanent and will be freeholders, men who own their property, and as I understand there are about five million of acres of land here, one-half of which is, I believe, susceptible to cultivation and settlement. Now, instead of building up a system of landlordism, as some of the gentlemen have said here, and getting the system of tenantry in this country, men who have no permanent abodes—the birds of passage, we might say, that are led to abandon this land at any time—I believe that it is an injudicious system. I believe in extending such inducements to men as will anchor them down and make them good and permanent citizens of Montana. We owe a great deal, as the gentleman has said, to the present generation. There are men and women in this Territory who were born here, who had advantages in the way of education, and they contributed largely towards opening up and building this country, and we believe are now raising children. I believe in granting to the present generation some advantages, and I believe in getting out of this system some advantages for the people who live today and the children that are now born, hence, I believe that the conclusion that has been arrived at by this intelligent committee is correct and I will support the report of the committee.

The Chairman: The question is upon the adoption of resolution number 8 as part of Section 2 of Proposition No. 17.

The Chair put the question on the adoption of the said resolution No. 8 and a vote being taken the same was declared lost.

The Chairman: The Clerk will read Section 3 of the proposition.

The Clerk read Section 3 as follows.

"Sec. 3. Such public school funds shall forever remain inviolate, guaranteed by the state against loss or division, to be invested, so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings, under the restrictions to be provided by law."

There being no amendments to Sec. 3, the Clerk read Sec. 4, as follows:

Sec. 4. The Governor, Superintendent of Public Instruction, Secretary of State, Attorney General shall constitute the State Board of Land Commissioners which shall have the direction, control, leasing and sale of the school lands of the state and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law."

Mr. J K. Toole, of Lewis & Clarke, sent up an amendment.

The Chairman. The gentleman from Lewis & Clarke moves to amend as follows.

Add to Sec. 4: "Provided that whatever disposition is made of such land preference shall be given to residents thereon who, prior to July 4, A. D. 1889, in good faith entered upon and made valuable improvements upon the same."

The motion was seconded.

Mr. Hershfield, of Lewis & Clarke: Mr. Chairman, the Committee on Miscellaneous Subjects have a subject in their report that covers that.

Mr J. K Toole, of Lewis & Clarke: If the gentleman is correct, I will withdraw my motion

Mr. Middleton, of Custer: In the first line before the words "Attorney General," I think the word "and" should be inserted.

The Chairman: If there be no objection, the Clerk will be instructed to insert in the presence of the committee the word "and". The Clerk will read Sec. 5 of the proposition.

The Clerk read Sec. 5, as follows:

"Sec. 5. The interest on all invested school funds of the state, and all rents accruing from the leasing of any school lands, shall be apportioned to the several school districts of the state, in proportion to the number of children and youths between the ages of six and twenty-one years, but no district shall be entitled to such distributive share that does not maintain a public free school for at least three months during the year for which distribution shall be made."

There being no amendments to Sec 5, the Clerk read Sec. 6, as follows:

"Sec. 6. It shall be the duty of the Legislative Assembly to provide by taxation or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free, common school in each organized district in the state, for at least three months in each year."

There being no amendments to Sec 6, the Clerk read Sec. 7, as follows:

"Sec. 7. The public free schools of the state shall be opened to all children and youths between the age of six and twenty-one years."

There being no amendments to Sec. 7, the Clerk read Sec. 8, as follows:

"Sec. 8. Neither the Legislative Assembly nor any county, city, town or school district, or other public corporations, shall ever make, directly or indirectly, any appropriation, or pay from any public fund or money whatever, or make any grant of lands or other property, in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever."

There being no amendment to Sec. 8, the Clerk read Sec. 9, as follows:

"Sec. 9. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state, nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex."

There being no amendment to Sec. 9, the Clerk read Sec. 10, as follows:

"Sec 10. The Legislature shall provide that all elections for school officers shall be separate from those elections at which other state or county officers are voted for."

Mr. Joy, of Park: I move to strike out that section. I do not see that it means anything.

Mr. Maginnis, of Lewis & Clarke: I was opposed to the section in committee and on time, but it means this, that the school elections shall be separate from the general elections.

Mr. Rickards, of Silver Bow: I hope this motion will not prevail. As Major Maginnis has just said at first he was opposed to this section, but after duly considering all the arguments in favor of and against it, it was the unanimous judgment of the committee to recommend the adoption of that section. Now, I do not believe that there is anyone here but certainly has seen and now feels the importance of removing as far as possible the election of school officers from that of a general election; and that is the object of this section. We not only believe it is wise, but we believe it is necessary to place in the Organic Act, or rather our constitution, that the Legislature shall provide for separate elections for school officers, believing as we do that the election of school officers should not take place at the time of the election of municipal officers and county officers. I cannot see any reason for the motion of the gentleman for striking out that section, and I can see every reason for retaining it as a part of this proposition.

Mr. Joy, of Park: Whatever might have been the unanimous opinion of that committee if that still remains that that provides that the election of all school officers, whoever they may be, must be separate from the general election Now, the gentleman who has just taken his seat argued here on the floor the other day that that was one of the offices that a lady might fill—(Interrupted).

Mr. Maginnis, of Lewis & Clarke: Will it meet the objection of the gentleman if the words "school district officers" are inserted in there?

Mr. Joy, of Park: That will be acceptable.

Mr. Maginnis, of Lewis & Clarke: I move the section be amended by inserting the word "district."

The Chairman: The gentleman from Gallatin, Mr. Luce, moves to amend as follows:

Amend Section 10 by inserting the word "district" after the word "for" in line 1.

The motion was seconded.

Mr. Maginnis, of Lewis & Clarke: Would not "school district" be better than "district school"?

Mr. Joy, of Park: Mr. Chairman, that amendment having been presented and seconded, I will withdraw my motion to strike out the section.

The Chairman: If there be no objection the gentleman from Park will be allowed to withdraw his motion to strike out the section. The question will be upon the adoption of the amendment offered by the gentleman from Gallatin, Mr. Luce, to insert the words "school district officers" in lieu of the words "school officers" where they occur in the section.

Mr. Hammond, of Jefferson: It will be necessary then to strike out the word "other" before the word "state". I move to amend by striking that out.

Mr. Luce of Gallatin: I will accept the amendment to strike out the word "other."

The Chairman: The amendment having been accepted, the question will be upon the adoption of the section as amended by the motion of the gentleman from Gallatin.

The Chair put the question upon the adoption of the said section as amended, and a vote being taken, the same was declared carried.

There being no further amendments to Section 10, the Clerk read Section 11, as follows:

"Sec. 11. The general control and supervision of the state university and the various other state educational institutions shall be vested in a State Board of Education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of eleven members, the Governor, State Superintendent of Public Instruction and Attorney General being members ex-officio, the other eight members thereof shall be appointed by the Governor subject to the confirmation of the Senate, under the regulations and restrictions to be provided by law."

There being no amendment to Section 11, the Clerk read Section 12, as follows:

"Sec. 12. The funds of the state university and of all the other state institutions of learning, from whatever source accruing shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law and shall be guaranteed by the state against loss or divergence. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions."

Mr. J. K. Toole of Lewis & Clarke: I would just like to inquire of the Chairman of the committee whether the change in the present age of the school children was made intentionally from four to six years. It is four under the existing law, and now it is six to twenty-one.

Mr. Maginnis, of Lewis & Clarke: Yes, the committee changed the law. We concluded that six years was the proper age.

Mr. J. K. Toole, of Lewis & Clarke: I just made the suggestion, as something was said the other day about a Kindergarten system.

Mr. Rickards, of Silver Bow: I move that when the committee rises they report Proposition No. 17 back with the recommendation that with these slight amendments they do pass.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Rickards) and a vote being taken, the same was declared carried.

Mr. Rickards, of Silver Bow: I move the committee do now rise.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Rickards) and a vote being taken, the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

Mr. Kanouse, of Meagher: Mr. President, your Committee of the Whole have had under consideration Proposition No. 17, have made certain amendments which are incorporated in the printed copy which I hold in my hand, and with such amendments they have directed me to report the same back to the convention with the recommendation that it do pass.

The President: The Chairman of the Committee of the Whole reports that he has been instructed to report back Proposition Number 17 with the amendments and a recommendation that it so pass.

Mr. Reek, of Deer Lodge: I move that the convention take under consideration Proposition No. 17, General File No. 16, on its final passage.

The motion was seconded.

The Chair put the question on the said motion of the gentlemna from Deer Lodge (Mr. Reek) and a vote being taken the same was declared carried.

Mr. J. K. Toole, of Lewis & Clarke: Mr. President, I move that the rules be suspended, that the proposition be read as a whole, and the ayes and nays be called.

The motion was seconded.

Mr. Collins, of Cascade: Mr. President, before that motion is put, I would like to ask if it is the sense of the convention that Section No. 11 should pass without amendment That Section 11 provides for a Board of Education consisting of 11 members, and it seems to me that it should be reduced to about 7; about five would be appointed ones, and the Governor and the Superintendent of Public Instruction would comprise the other two. Seven, it seems to me, would be plenty.

The President: The Chair would inquire from the gentleman from Lewis & lCarke if it was contemplated by his resolution to put this upon its final passage without receiving any further amendments?

Mr. J. K. Toole, of Lews & Clarke. Yes Act upon the amendments as reported by the Committee of the Whole only.

Mr. Maginnis, of Lewis & Clarke: In answer to the gentleman from Cascade, the reason that we fixed the number at this number was that ordinarily they make regents of the state university generally to consist of twelve or nine. Now, we held that the educational interests of the state would be subserved. and that the university and the different schools would run better, each in its own orbit, if they were to be under one single management, and consequently instead of having these various boards, we decided to have this one board to consist of eleven members which I do not think it too many, because two would be elected one year, two another, and two the sixth year, being eight members, and then the three members who are ex-officio in all would constitute the board.

The President: The question is upon the motion of the gentleman from Lewis & Clarke that the rules be suspended and that the consideration of the amendments offered by the Committee of the Whole be taken up, and that Proposition No. 17 be placed upon its final passage.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Toole) and a vote being taken the same was declared carried.

Mr. Middleton, of Custer: I move you that the amendment reported by the Committee of the Whole to Proposition 17 be adopted.

The motion was seconded.

The Chair stated the motion.

The President: The Clerk will read the amendments.

The Clerk read as follows: In Section 4 insert the word "and" after "Secretary of State" so that it will read "Secretary of State and Attorney General."

The Chair put the question on the said amendment, and a vote being taken, it was declared carried.

The Clerk read as follows: In Section 10 insert the word "district" after "school." Strike out the word "other" in line 2 after the word "which." So that the section shall read "The Legislature shall provide that all elections for school district officers shall be separate from those elections at which state or county officers are voted for."

The Chair put the question on the said amendments, and a vote being taken the same was declared carried.

The President: The proposition will now be placed upon its final passage, and the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Bickford, Brown, Burns, A. F.; Burns, A. J.; Burns, Edward; Cardwell, Carpenter, Cauby, Chessman, Collins, Cooper, Courtney, Craven, Dixon, Durfee, Eaton, Fields, Gaylord, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Hershfield, Hobson, Hogan, Joy, Joyes, Kanouse, Kennedy, Knowles, Kohrs, Loud, Luce, Maginnis, Marrion, Marshall, Mayger, McAdow, Middleton, Mitchell, Myers, Parberry, Ramsdell, Reek, Robinson, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, Joseph K.; Toole, J. R.; Watson, Whitehill, Winston, Witter, Mr. President—62.

Nays: None.

Absent: Brazleton, Breen, Buford, Bullard, Burleigh, Callaway, Conrad, Dyer, Hickman, Knippenberg, Muth, Warren, Webster—13.

The Chair announced the vote.

The President: The motion prevails and Proposition No. 17 as amended is adopted and incorporated as a part of the constitution of the state of Montana. It will now be enrolled and referred to the Committee on Revision and Phraseology.

Mr. Joy, of Park: I move that we take a recess until 8 o'clock.

The motion was seconded.

Mr. Rickards, of Silver Bow: I move to amend that we do now adjourn.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Rickards) and a division being called for the same was declared carried by a vote of 32 in the affirmative and 23 in the negative.

The convention stood adjourned until Thursday, August 1st, 1889, at 10 A. M.

TWENTY-THIRD DAY.

Thursday, August 1st, 1889. Morning Session.

The convention was called to order by the President at 10 A. M.

The Clerk called the roll.

The President: There is a note from Mr. Rickards, of Silver Bow, stating that on account of illness in his family he was obliged to go home. If there be no objection he will be excused.

The Chaplain offered prayer.

The Clerk read the minutes of the previous day.

Mr. Conrad, of Choteau: Mr. President, I desire to ask what committee the communication from General Rugar was referred to.

The President: The Committee on Judiciary.

Mr Conrad, of Choteau: I would like to offer a resolution and ask that it be referred to the same committee.

The President The gentleman from Choteau offers the following resolution which the Clerk will read.

The Clerk read as follows:

"Resolved that all Indian reservations within the state of Montana shall be under the jurisdiction of the United States Court."

The President: If there be no objection this resolution will be received and referred to the Committee on Judiciary.

Mr Robinson, of Deer Lodge, sent up a proposition.

The President. The gentleman from Deer Lodge offers a proposition relating to water rates.

The Clerk read as follows:

Proposition as to water rates, offered by Robinson, of Deer Lodge. "That priority of date of the appropriation of water shall be forever inviolable, and vested rights so acquired shall never be disturbed; that such rights to the use of all water in the state, except as to such water that has heretofore been or may be acquired by damming or reservoiring the same shall be usufruct, and extend to such and so much as the owner thereof may have actual use for, and for such length of time as he may have actual use for the same. That the Legislative Assembly of the state shall enact such laws as may be necessary to carry the foregoing provision into effect."

The President The Chair is of the opinion that this proposition properly applies to Committee No 15 on mining, water and water rights. and it will be so referred to the said committee if there be no objections. The consideration of the additional section to Proposition No 27 is now in order. Does the convention desire to take any action upon Proposition No 27, reported back from the printing committee?

Mr. Burleigh, of Custer. I move the consideration of Proposition No. 27 be postponed until the afternoon session.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Burleigh) and a division being called for the same was declared carried by a vote of 28 in the affirmative to 24 in the negative.

The President: Is there anything further before the convention under the head of unfinished business?

Mr. Warren, of Silver Bow: In connection with this matter, I think perhaps this capitol question will come up, and speaking in behalf of those who favor the removal of the capitol, we desire a full convention. We want a full and fair discussion of this matter, and I make the motion that next Wednesday morning at the morning session it be made a special order.

The motion was seconded

The Chair stated the motion.

Mr. J. R. Toole, of Deer Lodge. I presume this would require a two-thirds vote. It was suggested by a good many of the members of this convention that it might be well to postpone the consideration of this topic It is a proposition that is likely to create some discussion, and probably create some loss of time, and those of us who take some interest in the matter certainly have no desire to resort to any dilatory tactics or in any way to interfere with the progress that the convention is now making in its work. We have no desire to resort to the devices or ingenious methods of the parliamentarians. We simply wish that when the matter cimes up it will be disposed of in the shortest possible order; and I would say, at the request of a great number of the members here, that we are in favor of acceding to the motion before the house, and think it best, all things taken into consideration, that the matter be left over, or made a special order of business for Wednesday at ten o'clock, when we can meet here and in as speedy and effective a manner as possible, dispose of it according to the wishes of the members of this convention.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Warren), and a vote being taken the same was declared carried.

Mr. Maginnis, of Lewis & Clarke: I ask for leave of absence, for the day at least, for my colleague, Mr. J. K. Toole, who is ill at home.

The President: If there be no objection, the gentleman will be excused. The convention has now under consideration General Orders.

Mr. Middleton, of Custer: I move you that the convention do now resolve itself into the Committee of the Whole to consider Proposition No. 19, Articles on Legislative Departments.

The motion was seconded.

Mr. Maginnis, of Lewis & Clarke: I would suggest that the Chairman of the Committee is not here. Cannot we take up something else?

Mr. Collins, of Cascade: Mr. President, I move we go into the Committee of the Whole on general file.

The motion was seconded.

Mr. Aiken, of Silver Bow: Mr. Chairman, being a member of the Committee on Legislative Departments, I think that perhaps should be laid over until Mr. Toole, the Chairman of the committee, can be present.

The President: Does the gentleman insist on his motion?

Mr. Middleton, of Custer: I am perfectly willing to defer to anything that is reasonable in the matter, but it seems to me that the consideration of this matter in the Committee of the Whole, which can afterwards, and, as a matter of fact, is considered in the convention and subject to amendments after being reported back from the Committee of the Whole, would place the Chairman of the committee on this department in a position where he can advocate either the proposition as it stands or to propose amendments as they are, and I insist on the motion.

Mr. Maginnis, of Lewis & Clarke: I would only say that it is the usual custom in parliamentary bodies that the Chairman of the committee to whom it is referred has the management of it on the floor and in the house. I think it would be discourteous to my colleague to take it up at this time, and if there are any other files or schedules ready, I hope the gentleman will withdraw his motion and take up something else.

Mr. Middleton, of Custer: I will withdraw the motion on the understanding that it will be made the special order for ten o'clock tomorrow morning.

Mr. Maginnis, of Lewis & Clarke: Will the gentleman just withdraw it, and he will certainly find that there are no obstacles put in the way of its consideration tomorrow.

Mr. Middleton, of Custer: I shall insist upon the motion.

Mr. Eaton, of Park: In this connection I do not know how much personal influence can be brought to bear on this motion or its decision. Of course, the Chairman of the committee being sick, perhaps something ought to be allowed in that case in the way of postponement, but the consideration involved in this legislative department as it is reported by the committee render it imperative on my part at least, and so far as my vote goes, to object to any disposition of the question which will bring up the report of that committee, in the extreme last days of this week, or any other week. There are certain reasons for it. The absence of members and other matters; and while I am not disposed to insist upon the present consideration of this question, I am absolutely opposed to the postponement to a day fixed at the extreme part of the week.

The President: Does the Chair understand that the gentleman withdraws his motion?

Mr. Middleton, of Custer: No sir

Mr. Callaway, of Madison: Under the circumstances, the Chairman being absent and perhaps sick only for today—(interrupted).

Mr. Maginnis, of Lewis & Clarke: This is the only day Mr. Toole has been absent from the convention. He has been as regular an attendant as any gentleman on the floor.

Mr. Callaway, of Madison: I would suggest to the gentleman from Custer that we can take it up tomorrow.

The Chair put the question on said motion of the gentleman from Custer (Mr. Middleton) and a division being called for the same was declared lost by a vote of 26 in the affirmative to 31 in the negative.

The President: The question before the convention now, is upon the motion of the gentleman from Custer, that the convention do now resolve itself into the Committee of the Whole for the consideration of General Orders.

The Chair put the question on the motion of the gentleman from Custer and a vote being taken the same was declared carried.

The President: The Chair will appoint the gentleman from Deer Lodge, Mr. J. R. Toole, Chairman of the Committee of the Whole.

The motion was seconded

IN COMMITTEE OF THE WHOLE.

Mr. J. R. Toole, of Deer Lodge, in the Chair.

The committee was called to order.

Mr. Collins, of Cascade. I move that we take up Proposition No. 28, Miscellaneous Subjects and Future Amendments."

The motion was seconded.

The Chair stated the question.

Mr. Hershfield, of Lewis & Clarke. I should think that a postponement of this subject would be judicious, because that committee is liable to have many other subjects to consider before the adjournment of the convention, and probably it would be wiser to postpone that and take up some other subject, because something may arise at any time that will be referred to that committee, being a Committee on Miscellaneous Subjects.

The Chair put the question of the motion of the gentleman from Cascade (Mr. Collins) and a vote being taken the same was declared carried.

The Chairman: The Clerk will read Proposition No. 28, Section 1.

The Clerk read as follows:

"Section 1. Members of the Legislative Assembly and all officers, executive, ministerial or judicial, shall before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States and of the state of Montana, and that I will faithfully discharge the duties of the office of .... according to law and the best of my abilities." And no other oath, declaration or test shall be requested as a qualification for any office or public trust."

Mr. Loud, of Custer: I desire to offer an amendment.

The Chairman: The gentleman from Custer offers to amend Section 1 by adding the words "So help me God" after the word "abilities" on line six.

The motion was seconded.

Mr. Hershfield, of Lewis & Clarke: This matter was very carefully discussed in our committee, and we have concluded that it would create considerable discussion on the part of gentlemen who would probably object to that way of affirmation, and it is an affirmation adopted by nearly all the states of the union, we concluded it would be better to leave it the way it is

Mr. Ramsdell, of Missoula: It seems to me that it is a step in the wrong direction. It was only two years ago that nearly all the state constitutions contained this proviso, and by the urgent solicitation of a large portion of the people of this country this section was stricken out, so that the civil affirmation is equivalent to the words "So help me God," and I think if we inspect the lights of a large portion of our people who have conscientious scruples in objecting to this form of vote, that we will leave it out

Mr Warren, of Silver Bow: As long as we have God in the constitution, I do not see any objection to it. I shall vote for the amendment.

Mr Collins, of Cascade: I do not see how those words can add anything to the dignity of the oath, more particularly when there is only one form of oath or affirmation. If you give us two forms in our constitution, it is all right; but if you leave those words out, it seems to me that adds dignity to the solemn words. The words "I solemnly swear (or affirm)" are sufficient. A great many people affirm, and if they do, the words "So help me God" are not in accordance with the affirmation. It seems to me it would be a great deal better to leave it just as it is.

Mr. Middleton, of Custer: If there is any one thing that people as a rule adhere to, it is the superstitions imbibed in childhood, if we may term that, and whether you may call it superstition or education, the matter of the form of the oath has been handed down to us from ages past, with the concluding words "So help me God," so that I believe it has become a part of the being of a majority of the people of this country; and to say that an oath by a large number of people that did not conclude with the words "So help me God" would have the same binding force and effect upon the minds or consciences of those persons, seems to me unreasonable. Now, so far as the matter of swearing or affirming is concerned, it is true that perhaps there are a few persons who object to taking an oath in the usual and ordinary form where it concludes with the words "So help me God." But in my observation and experience around courts for over fifteen years, I have never met or known but one man who when he was called upon to take an oath said that he would affirm. As a rule, not only in majority but nearly all persons do not hesitate to take the ordinary oath as prescribed by law, concluding with the words proposed by this amendment. Some of the remarks that have been made, to a large class of persons, undoubtedly sound sacriligious. Those words can certainly injure no person who takes an oath, and so far as the matter of an affirmation is concerned it need not conclude with those words. "Affirm" is inserted in here in a parenthesis, and an affirmation usually concludes with the words "under the pains and penalties of perjury." So that if a person was called upon to take an oath and said that he preferred to affirm by reason of conscientious scruples or convictions, I do not understand that if this amendment were adopted as proposed, that he would be bound to take the oath concluding with the words "So help me God" or even any of the words that are proposed there. Now, it seems to me that this amendment ought to obtain. I believe that I know persons that if you struck out of an oath the words "So help me God" would consider they were taking no oath at all; they would not consider that they were bound to tell the truth And in view of the fact that perhaps ninety-nine per cent of all the persons who will ever be elected to office under this constitution, at least I should hope the percentage would be that large—will be persons who believe in the existence of a Supreme Being, and will not hesitate as officers of the state of Montana to take an oath concluding with the words "So help me God." It seems to me this amendment should prevail.

Mr. Ramsdell, of Missoula: I would ask the gentleman who has just taken his seat why he has such a wonderful regard for the past ages, and I am sorry to see him obstruct the wheels of progress by his regard for these old institutions of the past. I said a few moments ago that this was progressive, and I believe that the progress in this manner in the last few years bears me out in this statement. In our last election certain citizens of New York City objected to the form of oath in that state, and not being allowed to be sworn by the judges of election had a written injunction issued from the superior court of that city forcing the judges of election to allow them to be sworn. And, according to the argument and the admission of the gentleman who has just taken his seat, that perhaps there is one person out of one hundred in the state of Montana that might object to this form of vote, it is here for that one person that I stand in support. I believe that that one person which he has admitted dwells within the limits of Montana, is entitled to support and defense in this constitution, and I believe that if we shut them out in this matter, that we have worked on them not only a hardship but we have abridged the liberty which we have so ably attempted to defend in this Organic Act. I am not in favor of it. I do not believe that it will be working any hardship upon the people that would subscribe to the form of oath which he has advised here, but I believe on the other hand that a majority of them would be in favor of it, and so far as a binding course of oaths is concerned, have we not all of us seen in courts of justice, and in other capacities, men holding their hand up and swearing before their God to certain facts, and in a few short days, or in a few short weeks, have not certain circumstances transpired that demonstrated them to be perjurers? So far as a form of oath goes, I would believe a man who, standing before a judge or a notary with the full dignity of a man, with truth shining upon his eye, makes and subscribes to any form of affirmation or oath. I care not whether it is hedged in by all the provisions he attempts to circumscribe to it here, I would accord that man as much respect for his oath and as much recognition of it as the man who subscribed to some form of oath that has been handed down from the dusty ages of the past.

Mr. Burleigh, of Custer: I heartily endorse all that has been said by my colleague from Custer County, and while there may be but one person in all the United States who is in favor of recognizing God in the oath or binding the consciences of men by referring to a Deity, I can say that there are three representatives of Custer County who repudiate the situation taken by my young friend from Missoula, and I am ready to say that there are not only three representatives here but that there are ninety-five per cent of our citizens who would not hold us guiltless if we fell into his turn of argument. When he speaks of the folly of following the examples of the past and going back amidst the dusty pages of the past, I say to him that I am slow to leave the pages of my childhood, and I am slow to leave the examples left us by the great men and the patriots and statesmen and lawgivers who went before, and I believe they are not to be repudioted by any stripling or any hoary-haired man who has the audacity to get up and by his protest upon the floor of this convention defy the Almighty—for it is nothing else than a defiance. It suggests itself to my mind, the old question which we have all heard, and I would ask him "Upon what meat has this our Caesar fed that he has grown so great," that he has undertaken to become the moral censor of these God-fearing people. I am in favor of adhering to the old forms of oath that has existed since the foundations of justice were established and that comes down to us from the ages of the past where law and justice had their origin. If a man thinks his conscience won't allow him to appeal to the Almighty, let him affirm. There is ample provision for it here, but this oath has become a part and parcel of the common law of this country, and if you undertake to strike it out here, so far as officers are concerned, you have got to strike it out in the courts of justice, and everywhere else. I for one am in favor of the amendment offered by my colleague and shall support it.

The Chairman: The question is upon the adoption of the amendment offered by the gentleman from Custer.

The Chair put the question on the said motion of the gentleman from Custer (Mr. Loud) and a vote being taken the same was declared carried.

Mr. Hershfield, of Lewis & Clarke: In line six I see there is a clerical error. The word "requested" should be "required," and I would like to have the word "required" substituted for the word "requested." I so move

The motion was seconded.

The Chair put the question upon the said motion of the gentleman from Lewis & Clarke (Mr. Hershfield) and a vote being taken the same was declared carried.

There being no further amendments to Section 1, the Clerk read Section 2, as follows:

"Sec. 2 All officers whose election or appointment is not provided for by the Constitution, and all officers whose office and duties may be hereafter created by law, shall be elected or appointed as may be provided by law."

There being no amendment to Section 2, the Clerk read Section 3, as follows.

"Sec. 3 The Legislative Assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state."

There being no amendment to Section 3, the Clerk read Section 4, as follows:

"Sec. 4. The Legislative Assembly shall enact suitable laws to prevent the destruction by fire, from locomotives on railroads, or from any other cause, of the grasses and forests upon lands of the state or upon lands of the public domain, the control of which may be conferred by Congress upon this state and to otherwise protect the same."

Mr. Goddard, of Yellowstone: I move to strike out Section 4 for the reason that it is legislation, and has no business in this constitution.

The motion was seconded.

The Chair stated the motion.

Mr. Courtney, of Silver Bow: I hope the motion will not prevail for the reason that I cannot see very much legislation in this matter. It just simply says that the Legislature shall enact suitable laws, and it seems to me it is the purpose of this constitution to indicate some of the laws that the Legislature shall enact.

Mr Goddard, of Yellowstone: I only wish to say one word in relation to this matter. If it is proper to have such a provision in the constitution as Section 4, then it would be proper to have a provision in there that the Legislature shall provide for the punishment of misdemeanors, for the punishment of crime of burglary, murder, petit larceny, grand larceny, and every other crime that is known to the statute: and if it is proper to put such a provision as that in the constitution, it would be proper to put a provision in, in relation to trespassing of animals, and every other unlawful offense known to the statute. We have enough of these matters in the constitution now which are simply legislation and nothing else, and therefore I am in favor of striking out of every provision in this constitution anything which smacks of legislation. Certainly this is simply and purely legislation, and has no busness in this constitution.

Mr. Cooper, of Gallatin: I hope this will not be stricken out I think it is a wise provision and a wise thing particularly at this time when our country is all on fire, and in almost every case is occasioned from the very causes to which this section directs attention. There is no legislation in it; it is not legislative. It simply points and directs the attention of the Legislature in this matter. It says that they shall pass suitable laws, etc. I think in our Territory where there are such large stock interests, this matter should be covered by proper statute, and it may go for years unless the attention is directed to the matter by this constitution.

Mr. Robinson, of Deer Lodge: So far as the proposition itself is concerned, that is embraced in Section 4. It is all right and correct enough, but the only objection to its remaining in here is simply that it falls in what is generally designated by lawyers and writers as the police power of a state. Whenever a state Legislature is clothed with that—with the police power of the state—then it is understood what that means and what it extends to. Then in legal parlence all that is embraced in this Section 4 falls clearly within the police power of the state. Hence, it is not necessary for the constitution to go into every subject matter that belongs to the police power of the Legislature in detail. It is not necessary to go into this any more than it would be to go into a thousand other things that we might enumerate that the Legislature can act upon. It is not necessary to direct their attention to this in particular any more than it is to any other of a thousand different subjects of Legislation that might be embraced in the constitution; and if we follow them up one by one and direct the attention of the Legislature to all these various subject matters, we would have our constitution pretty near as large as Webster's unabridged dictionary. So, this being unnecessary in here, I am in favor of striking it out.

The Chair put the question on the said motion of the gentleman from Yellowstone (Mr. Goddard) and a division being called for, the same was declared lost by a tie vote of 30 in the affirmative to 30 in the negative.

There being no further amendments to Section 4, the Clerk read Section 5, as follows:

"Sec. 5. The Legislative Assembly shall enact liberal homestead and exemption laws."

There being no amendment to Section 5, the Clerk read Section 6, as follows:

"Sec. 6. No perpetuities shall be allowed, except for charitable purposes."

There being no amendment to Section 6, the Clerk read Section 7, as follows:

"Sec. 7. All county officers shall keep their offices at the county seat of their respective counties."

Mr. Kennedy, of Missoula: I move to insert after the word "officers" "except as otherwise provided by law." This section as it reads would make it obligatory on the county officers to have their offices at the county seat.

The motion was seconded.

The Chair stated the motion.

Mr. Carpenter, of Lewis & Clarke: It seems to me that ought to remain in, that the office of every county officer should be at the county seat. This does not require his residence to be there.

Mr. Kennedy, of Missoula: I withdraw my amendment, with the consent of my second.

The Chairman: The gentleman withdraws his amendment.

There being no amendments to Section 7, the Clerk read Section 8, as follows:

"Sec. 8. All officers shall hold their offices until their successors are elected and qualified. The term of all officers elected, except as otherwise provided in this constitution, shall commence on the first Monday of January following their election."

There being no amendment to Section 8, the Clerk read Section 9, as follows:

"Sec. 9. In the disposition of the public lands granted by the United States to this state, preference shall always be given to actual settlers, and the Legislative Assembly shall provide by law for carrying this section into effect.

Mr. Loud, of Custer: I move to amend Section 9 in line 2 by inserting the word "thereon" after the word "settlers."

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer (Mr. Loud) and a vote being taken, the same was declared carried.

There being no further amendment to Section 9, the Clerk read Section 10, as follows:

"Sec. 10. No railroad or other transportation company, or any agent, officer or employe thereof, shall grant free passes or tickets, or passes or tickets at a discount, to members of the Legislative Assembly, or state, or county, or municipal officer or officers, and the acceptance of any such pass or ticket by a member of the Legislative Assembly, or any such officer or officers, shall work a forfeiture of his or their office, and the emoluments thereof, and any railroad or other transportation company violating any provision of this section shall forfeit to the state one thousand ($1,000) dollars for each and every violation thereof, to be recovered by an action of law"

Mr. Callaway, of Madison: I desire to offer an amendment.

The Chairman: The gentleman from Madison offers the following amendment: Amend Section 10 by adding thereto "it shall be the duty of the Legislative Assembly at its first session under this constitution to enforce this provision by appropriate legislation."

The motion was seconded.

Mr. Callaway, of Madison: Section 10 as read is almost an exact copy of the constitution ratified by the people five years ago this fall, and it is well known that no more popular proposition was submitted to the people of Montana and received such general support as that one provision. Now, the only object of the amendment is this. In discussing the matter among the lawyers they are of the opinion that the Legislature would let this alone—in other words it would be practically an inoperative provision. In the state of Missouri they have the same provision exactly, and I am informed by gentlemen in that state that that provision of the constitution is violated every day, that notwithstanding that men would go and hold up their hands and say that they would protect the constitution, yet they would travel all over that state with passes in their pockets. Therefore, I want to make this provision ironclad. When it requires as a matter of duty that the Legislature shall at its first session enforce what has been ratified by the almost unanimous vote of the people of Montana five years ago, I want to put it in such a way that the Legislature will not shrink from its duty. If they do, there will be somebody to have something to say.

Mr. Hartman, of Gallatin: I move to strike out Section 10.

The motion was seconded.

The Chair stated the motion

Mr. Burleigh, of Custer: It seems to me that we could get at this matter a little more squarely by adding an amendment something like this—I appreciate the course of what my friend from Madison County says but I think he has not enough of the right remedy to prevent fraud or perjury, to temptation, and it seems to me that if this amendment read something like this: "Every railroad or other transportation company shall grant free passes or tickets to the members of the Legislative Assembly and to every other state, county or municipal officer, etc., regardless of fear or affection, hatred, malice or ill will" that it would strike to the root of this thing and cure it. If we put the railroads and other companies in this situation and compel them to pay tribute to these public officers, and help support them, it seems to me it would be a step in the right direction; and then when these men came to the seat of government require them to account for their railroad transportation. Of course, I am not going to insist strenuously upon it.

Mr. Maginnis, of Lewis & Clarke: I rise to support the gentleman's motion. (Laughter) This is not a laughing matter. It is a serious proposition. These companies have use for all the sheriffs and deputy sheriffs and other officers along their line all the time, and we have a great example in this matter from the fact that when the Congress of the United States framed the Interstate Commerce Act this quesion came up as to how the members should be debarred from accepting any privilege from railroad companies, and the Congress settled it by declaring in the law that the companies should furnish that transportation. If we are going to legislate on this subject at all, I do not think we can do any better than follow the example of that illustrious body in accordance with whose act we are sitting here today.

Mr. Robinson, of Deer Lodge: When we are dealing with railroad corporations, we are dealing with rather dangerous engines; we are dealing with no ordinary artificial persons. The proposition submitted by the gentleman is very nice in theory, but I have always held this, that whenever any proposition coming before any legislative body affecting railroad corporations, that they can always see their way around perfectly well, they lie back and watch the Legislature amuse itself all it wants to upon their propositions, because they see, under the advice of the best counsel that we have, that the proposition is entirely harmless to them, and they are willing for a legislative body or convention to amuse itself with it all it wants to for a plaything. But whenever a proposition is suggested and under the advice of their counsel they see the possibility of harm made to them, then, sir, they invariably step in and say to that body "No sir, that shall not go through," and unless the members of the deliberative body are made of such material that they are like handling a stubborn government mule—unless they have that firmness in them, allow the railroad corporations invariably to handle that body, and it does not own itself. In one time, sirs, in ten would a legislative body own itself when besieged by railroad corporations It is speaking badly of humanity; it is speaking badly for the independence of these deliberative bodies, but we must look at facts as they stare us in the face. Now, this proposition suggested would be very good, if it could be carried into effect. It would be a good change that the railroad corporations would desire us to amuse ourselves with; but as a legal conundrum it appears to me that so far as all the railroad companies in the state of Montana that have been constructed, that this proposition would fall harmless, for the reason that it cannot be enforced. We cannot go into our constitution and impose new terms and conditions upon these railroad corporations who have received their authority to act under the government of the United States. We have no power to impose these conditions upon them. Therefore, any provision of this character that we seek to engraft in our constitution would be laughed at by the railroad companies, if it was intended to work an injury to them. For that reason, I am opposed to the amendment, and I am in favor of the plain proposition that is contemplated in Section 10 as the report of this committee. I am opposed to this amendment sought to require them to furnish free transportation to a certain class of individuals or officers, for the reason that it cannot be enforced.

Mr. Buford, of Madison: I would like to ask if this has any bearing upon our Stock Inspectors that pass over the road. If so, I am in favor of striking out the section.

Mr. Middleton, of Custer: I am a little bit surprised at the animus of my venerable friend from Deer Lodge County. If there is any one county in this convention that has stood pat from the beginning to this time attempting to hold matters of legislation out of this fundamental law that we are trying to enact that venerable gentleman certainly has been one of them, and I have felt with him in that matter. There are a thousand and one things that might creep into this constitution that are matters that are the subject of legislation, but to take them as fundamental propositions or as becoming parts of the organic law of Montana, they certainly are out of place. Now, there is a law almost verbatim with this Section 10, or at least, such a law has been attempted to be enacted by the Legislature several times. I believe it never was enacted. But consider for a moment the situation. Here we are as delegates representing the people, coming here and tying the hands of the people, by reason of legislation that indicates upon its face that the people have not confidence in their fellow men; in other words, by a kind of legislation wherein I said to myself I have not the confidence in myself as a public officer, and consequently I will tie my hands behind my back for fear that I might steal something, or for fear that some railroad company might give me transportation from Miles City to Helena, and by reason of that transportation of probably ten or twenty dollars, I will be expected to violate my oath as an officer and not treat that corporation fairly and squarely upon its merits the same as an individual. The railroad companies and corporations of this state are a part of us. Without the existence of railroads Montana would not be much today, and to say that because you offer me a ride in your conveyance that it is going to influence me so that I will come in here as a member of the Legislature or a Judge of the Supreme Court, or occupy any other official capacity, and by reason of your having given me a ride, say that I would decide a matter in your favor regardless of the merits of the question, seems to me to indicate that the people have not confidence in themselves. I do not believe there is any clamor for anything of the kind. I have no hesitancy in saying that I have ridden more than once on free transportation, and I do say in addition to that that it never had any more influence on me than if I had paid my fare.

Mr. Robinson, of Deer Lodge: Are you not an attorney of a railroad corporation?

Mr. Middleton, of Custer: I never was the attorney of a railroad corporation, thank God, in my life. I have succeeded in making a bare living without being the attorney of any corporation.

Mr. Callaway, of Madison: As the mover of this amendment, I wish to ask a question. I will ask the gentleman whether he came into the convention with a pass in his pocket or not?

Mr. Middleton, of Custer: Whether I came into the convention with a pass or not I do not consider as any of the gentleman's business. (Laughter and applause) I came here not as the representative of any railroad, not as the representative of any labor organization, not as the representative of any locality, to do what seemed in my judgment to be right in the interest of the people of the whole Territory of Montana. I have taken an oath of office to support the constituion of the United States, and to perform those duties faithfully to the best of my knowledge and judgment, and for any gentleman to stand upon this floor and to say that he himself or any other person now a public officer in the state of Montana, or hereafter to become such, would stoop to favor a railroad corporation or a stage company or anything else by reason of having been given a free ride, certainly impugns to himself something that I do not desire to take to myself If the honorable gentleman from Deer Lodge were one of the Supreme Judges, or was a District Judge, as he is very likely to be—and I think he will make a very good one—and some attorneys who had a case to try before him invited him to dinner, invited him to the hospitality of his home—does he pretend to indicate to this convention that that would influence him as the Judge in favor of that attorney's cause or the client? Is it not practically the one and the same thing? I believe that the railroad companies and the stage companies, and all those concerns, have a right to exist, and have a right to the same kind of treatment that other companies and corporations and individuals get, and no better. I believe that there should be such legislation as would, even in the shape of police legislation, require and enforce the performance of their duties as they should be performed I believe that that same sort of thing should apply to individuals, But to say that because, as the gentleman has suggested, that perhaps I rode from Miles City here on a pass, I am standing up here as an advocate of railroads, standing up here and placing myself in a position where by reason of a ten dollar ride or a twenty dollar ride, I would violate my oath, and do for that company what I would not have done had it not been for that pass, I think is carrying the matter to the utmost extreme. The gentleman has suggested that the constitution framed and adopted by the people five years ago had that provision in it. I am not aware of that fact, but let me say this to you, that the actions of this convention thus far have indicaed that no convention on the face of the earth that ever preceded it had any intelligence to compare with this convention. The constitution of the United States, that great article that has stood for more than one hundred years with hardly an amendment, with no legislation in it, is cast aside as no criterion to be governed by here, and for the same reason the constitution of five years ago has hardly been given consideration, although that constitution was very far from running in the same line as the constitution of the United States. It seems to me that we are here for the purpose of enacting fundamental law, of simply placing certain checks upon certain officers, and perhaps upon certain questions of legislation. Outside of that the Legislature has and should have full and absolute power and control over all these matters; and to say that we should vote in favor of such a section as Section 10 of that bill, tying the hands—not only tying the hands of the Legislature but compelling them according to the gentleman's proposed amendment, to enact such laws as would enforce the provisions of this section, indicates that the gentleman has not confidence in himself—indicates a weakness in the case I have cited, that if I invited him to dinner at my house he would be so softened and mollified in my favor that he would do anything for me even to the extent of violating his oath—that if I gave him a ride in my carriage, although I have no carriage, that I would have him to stand and fight for me and violate his oath. I do not believe that that kind of thing should go into this constitution, and I certtinly will support the motion to strike it out. It is legislation, vicious legislation.

Mr. Hershfield, of Lewis & Clarke: The unintentional confession on the part of the gentleman in his effort to strike out this section that legislative bodies have attempted to pass laws something similar to this section, and have failed, should in my opinion arouse the convention to the necessity of adopting this very section, and I trust that such will be the result.

Mr. Clark, of Silver Bow: I understand the motion before the committee is upon the amendment offered by the gentleman from Madison.

The Chairman: No sir; there is a motion of the gentleman from Gallatin to strike out Section 10.

Mr. Clark, of Silver Bow: I would like to suggest to the Chair that a motion to amend takes precedence of a motion to strike out That is a very well settled principle of law. The friends of a measure have a right to perfect it in every way they can before it is stricken out.

Mr. Robinson, of Deer Lodge: I understood the proposition to be voted on was the amendment of the gentleman from Madison.

The Chairman: The amendment of the gentleman from Madison is to add to Section 10 the words "It shall be the duty of the Legislative Assembly at its first session under this constitution to enforce this provision by proper legislation."

Mr. Watson, of Fergus: I have only one word to say upon this subject. The committee in considering this subject had but one thing in view, and that was this: That while they might have differed in regard to the necessity, the absolute necessity of that law, in order to preserve the purity of legislators and public officers, they had no doubt as to the desire of the people of Montana that such a provision should be enacted in the constitution, and hence they have presented the article.

Mr. Callaway, of Madison: As the gentleman from Silver Bow, Mr. Clark, has well said, the friends of the measure have a right to perfect it so that it takes precedence of a motion to strike out; but as this proposition has taken somewhat of a wide range it would perhaps not be improper for me to respond to some of the gentleman's remarks, particularly the remarks of the gentleman from Custer. I have no disposition to inpugn the motive of any man. Perhaps I am not so strong in my convictions as the honoroble gentleman who poses here as a man who does not need the protection of the law in this respect. Mr. Chairman, this is not a new subject in Montana—and one word in reply to the honorable gentleman from Lewis & Clarke, Major Maginnis This history of legislation in controlling railroads has a life of more than thirty years. I remember, sir, as a member of the Illinois Legislature in 1869, when the first bill was introduced for the purpose of controlling the railroad in the state of Illinois, there were eighty-five members of the House and twenty-five of the Senate. At that time the growth of the railroads had checkered the entire state. They simply proposed to control them as against unjust discrimination, and in that legislation every railroad attorney in the state, every member of the Legislature who was a railroad attorney, and every officer voted consistently in that Legislature against the proposition. You know, gentlemen, as the member from Deer Lodge has well said, that they will allow conventions and legislatures to amuse themselves, but whenever there is a proposition that they do not want to pass they finally step in and say "It does not go." I do not want to impugn the motives of any gentleman here, but you can look around yourselves, and I think you will find the majority of those men who go for this measure are in no way connected with a railroad company. I well understand the meaning of the honorable gentleman from Custer, Dr. Burleigh, in making fun of this measure so as to defeat it. Well now, we pass on a little further, gentlemen. We find that the state of Wisconsin did manage to get a bill through both houses of the Legislature controlling the great corporations of the state of Wisconsin. You know, gentlemen of this convention, that it is literally true that the rich in this country are growing richer and the poor are growing poorer. Why? It is because of the trusts that are formed of capital, because of the great aggregations of wealth by which they have been enabled to ride down the poor man and stop his earnings. I admire a man that, by his intellect, his industry and attention to business, his economy, acquires wealth and uses it in this broad land of ours, but I do not propose to give my vote for the increasing of the power of corporations anywhere in the United States. And, gentlemen, I remember this fact distinctly, too, that in the former convention that I have named of a little over five years ago, I stated without fear of contradiction that every man in that convention who was connected with railroad matters as employees or attorneys voted against the clause that the people ratified by more than fourteen thousand majority in the Territory of Montana. So that when we come down to ask ourselves, when you gentlemen go home and have reported that you have defeated this measure that I say is one of the most public ones that is before the people—go and ask them and they will tell you it is so—if you are here to defeat their will, then meet them when you go home. I say this is a proper subject for this convention to act upon, to lay its hands upon the Legislature and restrain them. What are we here for but that? We are here for granting them power to do certain things, and then where danger lies restraining them from it. I do not believe in the proposition that because a measure is proposed, that throws restrictions around corporations and great powers, that is to impugn any man's sense of justice, or his conscience or uprightness. And let me warn you again, gentleman We have here two great trunk lines running through the Territory of Montana, one 822 miles long, another one nearly as long. and just as true as you are born the results of the influence of those corporations will be felt. It is the experience of all men here that when you come to organize your state government and when you come to elect your senators, your Governor, Chief Justice and other officers, those corporations will come very near controlling the politics of Montana. They have always done it, and will continue to do it. Why, it is within the memory of everybody who has occasion to read the newspapers that each party, be it said to its shame, has made exertions to capture the railroad vote, and they have on one side or the other succeeded in doing it on every occasion. I say this provision can do no harm. I know the railroads wont support it I know they do not like it now I know they laughed at the members of the last convention when they went to insert that provision there; every soul of them voted against it. And so it is today. Having said that much, gentlemen, and believing that this amendment is right and will prevail, and that this provision will go into the constitution, because it cannot do any harm but may do good, I shall vote for the amendment.

Mr. Burleigh, of Custer: I desire by way of explanation to suggest to the consideration of my illustrious friend from Madison County that if he thinks for one moment that I made the suggestion which I did by way of a verbal amendment here for the purpose of diverting the attention of the convention from the true question presented, or for the sake of making sport, he is wonderfully mistaken. I can only account for his conclusion on the ground that he seems to be unwell; whether he is troubled with a chronic dyspepsia or some mental aberration, I do not know, but he was never further from the anchor of God's truth in his life before: I believe that if the amendment that I suggested is adopted, that it will have the effect of preventing all this corruption and bribery and everything of that kind that is charged here, and will bring these men to their senses, and I know that when my honorable friend from

Deer Lodge County—my honorable friend and my patriotic friend—comes to look the thing fairly in the face, he will come to the same conclusion that I have arrived at. Now, so far as the friendship of the railroad company is concerned, especially the Northern Pacific, no man who knows my history will accuse me of it. I think I can venture to say that I have brought more suits against the Northern Pacific Railroad Company for damage to stock and property than any other attorney in the Territory of Montana I was the first man, I believe, to ever bring suits against them to compel the specific performance of their contracts with the poor settlers of the Yellowstone Valley, and I venture to say that I have fought those suits for the last five years, and they are still pending without any sign of yielding on my part; and I am the last man in the world who ought to be accused of friendship or partiality to railroad companies, or doing anything outside of my duty to protect them. I did not suppose that the radical measure which I introduced here would be adopted. There are some things which come sometimes with such overwhelming force that people cannot comprehend them at once. Occasionally a great movement in the right direction is comprehended and adopted at once, but as a general thing it goes over and becomes discarded property, and finally men take it up by installments, and at last adopt the whole thing. But my objection to this clause is the argument that I have urged here twenty-five times at least on this floor, that it savors of a species of iniquitous legislation, which has no place in this constitution. Now, I wll repeat again here that this constitution is the creature of the people; that all sovereign power to make the laws and enact laws resided in the people of this Territory. They adopt this constitution, and whatever they insert here is a delegation of power to the government, and can be exercised in the manner prescribed by the Organic Act Now, this power is in the people; how is it to be exercised? It is to be exercised by them at the ballot box and by their representatives in the Legislature who are sent up to represent them, simply because they are too numerous to represent themselves. It is the sovereign power of the people, and all that you put in here is the mere curtailment of that power which is inherent in the people, and for that reason I shall vote against the amendment.

The Chair put the question on the amendment of the gentlemen from Madison (Mr. Callaway) and a division being called for the same was declared lost by a vote of 30 in the affirmative to 32 in the negative.

Mr. Hartman, of Gallatin: I should like to ask the Chair whether the motion to strike out made by myself was declared out of order?

The Chairman: Yes.

Mr. Hartman, of Gallatin: I desire to renew it at this time.

Mr. Warren, of Silver Bow: I have an amendment to the section.

Mr. Goddard, of Yellowstone: I have an amendment to that section if it be in order at this time.

The Chairman: The gentleman from Yellowstone, Mr. Goddard, offers the following substitute for Section 10: All railroads in this state shall grant annual and trip passes to all state officers and members of the Legislative Assembly, and for the purpose of carrying this provision into effect the Secretary of State shall furnish all railroad companies doing business in this state a list of such officers. (Laughter)

Mr. Clarke of Silver Bow: As the amendment contemplates striking out the section and substituting another I would suggest that the amendment of the gentleman from Silver Bow would be in order.

Mr. Myers, of Yellowstone: I desire to offer an amendment to the section as it stands.

The Chairman: The gentleman from Silver Bow desires to amend by inserting after the word "Officers", in line 3 the words "newspaper Editors."

Mr. Middleton, of Custer: I rise to a point of order. It seems to me there was a motion made and seconded to strike out the section.

The Chairman: That motion is now before the House.

Mr. Clark, of Silver Bow: I rise to a point of order. It is a well settled principle of parliamentary law that has never been disputed and cannot be disputed that whenever a proposition is before a deliberative body, that before a motion to strike any section out can be entertained, that a motion to amend and perfect it is in order.

The Chairman: The Chair so rules, but there are no amendments that the Chair is aware of.

Mr. Buford, of Madison: I have an amendment.

The Chairman: Is it the desire of the gentleman from Yellowstone to have his amendment put?

Mr Goddard, of Yellowstone: I withdraw the amendment.

Mr. Warren, of Silver Bow, called for the reading of the amendment offered by himself.

The Clerk read the same.

Mr. Middleton, of Custer: Before these amendments are put I would like to have the point of order determined. I agree with the gentleman from Silver Bow that if there are amendments pending that the motion to strike out is not in order, but at the time this motion was put and seconded there were no amendments pending and the committee is entitled to have that motion put before any amendments can be entertained that were subsequently offered.

The Chairman: The Chair decides that a motion to amend takes precedence if presented. The gentleman from Silver Bow now moves to amend by inserting after the word "officer" in line 3 of the section the words "Newspaper Editor."

The motion was seconded.

Mr. Warren, of Silver Bow: In connection with this matter, it strikes me that the newspapers and newspaper editors have a greater influence on the people than any legislative assembly. They can get up and discuss any proposition, and if you want to protect the people, I think this ought to be directed to the newspapers as well as to the legislators.

Mr. Burleigh, of Custer I would like to suggest that the gentleman also include printer's devils.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Warren) and a vote being taken the same was declared lost.

Mr Clark, of Silver Bow: I move that the committee do now rise and report.

The motion was seconded.

The Chair put the question on said motion of the gentleman from Silver Bow, Mr. Clark, and a vote being taken the same was declared lost.

Mr. Hartman, of Gallatin: I now desire to renew my motion to strike out Section 10

Mr. Buford, of Madison: I would like to have my amendment read.

The Chairman There is an amendment offered by the gentleman from Yellowstone, Mr. Myers, which takes precedence. Insert after "officers" in line 3 "except Sheriff, Deputy Sheriffs and Stock Inspector"

The motion was seconded.

The Chair put the question on the motion of the gentleman from Yellowstone (Mr. Myers) and a vote being taken the same was declared lost.

The Chairman. The gentleman from Madison, Mr Buford, offers to amend Section 10 of Proposition No. 28 by striking out the words in the third line "State or county, or municipal officer or officers" and insert therefor "Members of the Judiciary Committee"

The motion was seconded.

The Chair put the question on the motion of the gentleman from Madison (Mr Buford) and a vote being taken the same was declared lost.

Mr. Mayger, of Lewis & Clarke: I move that the committee do now rise.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Mayger) and a vote being taken the same was declared lost.

Mr Luce, of Gallatin: Mr. Chairman, if a substitute is in order, I would like to offer one.

Mr. Collins, of Cascade. I suggest that the motion to strike out would be in order now.

The Chairman: The Chair decides that a substitute or motion to amend takes precedence of the motion to strike out. The gentleman from Missoula, Mr. Bickford, offers the following substitute for Section 10: "The Legislature shall have power to pass all laws necessary in order to prevent railroads and other corporations or persons operating transportation lines in this state from issuing passes to state, county, municipal or other officers thereof."

The motion was seconded.

Mr. Goddard, of Yellowstone: I would be opposed to that for the reason that the Legislature always has that power.

The Chair put the question on the said motion of the gentleman from Missoula (Mr. Bickford) and a vote being taken the same was declared lost.

The Chairman: The gentleman from Gallatin, Mr. Luce, offers the following substitute for Section 10: "The Legislative Assembly shall provide by law for the total prohibition of the issuing of free passes or tickets of discount by railroad corporations or any other common carriers to any state officers, to any member of the Legislative Assembly or to any county or municipal officer, and shall impose suitable penalties for violation thereof."

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Gallatin, and a vote being taken the same was declared lost.

Mr. Robinson, of Deer Lodge: I move the committee do now rise.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Deer Lodge, and a vote being taken it was declared lost.

The Chairman: The question before the committee is to strike out Section 10.

Mr. Clark, of Silver Bow: I fully agree with the gentleman from Madison that this measure which was adopted by a former convention and submitted to the vote of the people of the Territory was one of the most popular measures and received the heartiest endorsement, and I believe that today if we adopt this provision which has been reported by the committee that it will meet with the hearty concurrence and approval of 90% of the people of Montana. Now, I do not wish to put myself in the attitude of being hostile to railroads and other corporations. I know the advantages of these corporations to the people of this state. I know that the railroads in this country that have threaded our valleys and brought cheap merchandise to our doors and taken away our mineral have been of incalculable advantage to this state. But for them, hundreds of mines producing untold wealth today in this country would not be opened: but for them, these cities which stand as an honor to the Territory would be but mere villages; and I am opposed to throwing any obstructions in the way of provisions in the constitution or in the Legislature that would discourage them in the least; but on the other hand, I am willing and desirous that their interests shall be promoted in every consistent way. Now, I do not believe that the adoption of this section in the constitution is going in any way to impede the legitimate operation of any of these corporations. We know that it requires a certain amount of cost to operate a railroad in this country, so much per mile as generally reckoned upon. Now, the principle that was contemplated by the resolution of the gentleman from Custer, that we should make it obligatory upon the railroads to carry all the officers of the state, would involve a free transportation of several thousand men almost daily over this country. Do you undertake to say that this is fair and just? That these railroads should be compelled to carry these officers numbering thousands in this Territory—and that will travel frequently when they get free passes all over this country—is that a fair and just proposition? The proposition has been discussed in the legislative halls of the nation, and they have come to the conclusion that it is an iniquitous measure for corporations to grant free passes, and they have excluded them. The operations of the Interstate Commerce Law do not extend to another state. We have corporations here that are local, and usually they have become local in their nature, and they may grant passes to anybody within the limits of the state. It is only in traveling from one state to another that the operation of the national law takes effect. Now, as I remarked, it costs these railroad companies a certain amount of money to transport these people. It is not fair that they should be compelled to do this for nothing, and you may be assured that in making their estimates for the cost of operating their roads when the system of free passes is in vogue that they will have calculated about the amount of money that they will lose in that way, and they will tax it onto your merchandise or your freight in the way of ore. Does any gentleman suppose that the railroads of this country are working for nothing, or going to give value for nothing? Why, the very fact of the railroads desiring to extend these passes to members of the Legislatures, and I may say, most of the conventions, for I believe that every member of this convention has been tendered a pass by the time of its convening—do you undertake to say that they do this without a purpose? It is not well understood that the railroad people are about the smartest people we have on the face of the earth, and know as well as anybody the weakness of human nature? These matters unconsciously have an effect and a bearing upon members of the Legislative body when it comes to pass laws which might be inimical to the railroad company. I know before this Inter-State Commerce bill went into operation that there were men in this Territory that were shipping merchandise and ore and mineral and other articles of transportation, for which they were paying the railroad companies hundreds of thousands of dollars per annum, and yet those men were not offered a free pass to ride over the roads, but in a convention or legislative or any other political body these passes were distributed freely to men who probably never paid a dollar a year for transportation except indirectly. Now, is it not patent to the minds of everyone that the railroads have an object in view in distributing these passes? Don't they know when they give a pass to a man that rides over the railroad—and I will say that the dinner question is no comparison to it whatever; a dinner costs nothing, but a pass on a railroad would cost from ten to one hundred dollars. Don't they know that the moment they give that pass to a man he feels under obligation to the railroad company, and that everything else being equal all questions that come up before the Legislature he will give the benefit of the doubt to the railroad company in all probability, and in many instances there will be considerable stress upon the elasticity of the conscience. Now, I am opposed to striking out this measure. I believe in putting men beyond temptation, and I believe we should throw such restrictions about legislation and about judicial departments, and about the public departments of the State of Montana as will tend to preserve the purity of men in office, and try to avoid if possible any undue influence in legislating upon questions that affect these corporations.

Mr. Sargent, of Silver Bow: I am in favor of striking out this section, for I think we are getting beyond all the bounds of propriety and decency in telling the Legislature what it shall or shall not do on all questions which shall come up before it for its consideration, and every resolution of this kind introduced into this convention is a direct reflection upon the intelligence and the probity of the men who will be sent here to make our laws. I know a gentleman from the country said to me the other evening, in language not quite as classical as that in which Judge Cooley expressed the same idea to us here yesterday, but it was quite as forcible and as earnest, for I think he had been imbibing a little freely from some of the Helena hydrants—he said "Don't legislate too much; leave a little for those who come after you!" He says "If you seventy-five fellows up in that convention think you monopolize all the intelligence of Montana you are off your base." I agree with him fully, and I merely wish to say that if the people of Montana cannot be trusted to make our laws and haven't sufficient intelligence, honesty and courage to do their duty without being told by this convention, then our boasted intelligence is a farce, our liberties are held by a slender thread, and our popular form of government is a total and absolute failure.

Mr. Courtney, of Silver Bow: I wish to enter my protest before that motion is put. I am not in favor of striking out that section, and I do not wish by my attitude to reflect upon the honesty and intelligence of our people. The only opposition against this measure proceeds from the fact that it is legislation. Now, I am purposed to going extensively into legislation, but I do say right here that in all that is universally admitted to be good, you may call it legislation if you please, but I am certainly in favor of it. Now, this section is not original in our constitution. It found a place in the constitution of 1884. We also find it in the constitution of California. We find it in all these modern constitutions. Why was it put there? Simply because the experience of legislators saw fit to insert it, and deemed it a wise measure, and I certainly think myself that if it is inserted here it will serve a very useful purpose. Now, I have no antipathy to railroads. I do not wish my action to be so construed. I recognize the good they have done in this country, but I do unhesitatingly say that any measure that has for its purpose the purity of legislation, the welfare of the people, will always have my voice and vote in its favor, if I can comprehend it properly. Now, with my understanding of this measure I am heartily in favor of it, and certainly shall vote against the resolution to strike it out.

Mr. Robinson, of Deer Lodge: As the proposition now recurs upon the motion to strike this out, it resolves itself into the question of whether or not a railroad company or transportation company shall be entitled to issue free passes to state and county officers. It comes up squarely now before this committee. I desire to say in behalf of this proposition that is embodied in the report of the committee, and in opposition to the motion to strike this Section No. 10 out—I desire to say a word in answer to some of the arguments introduced by some of the gentlemen in favor of striking it out. In the first place, they must stop and consider that all men are not strong and fixed in their purpose of right as these gentlemen who have advocated it undoubtedly are. Those gentlemen, I dare say, in tracing back over the history of their lives, cannot call to mind an instance where they have been caught in a weak moment or where they have ever betrayed any weakness. They are acting upon that principle. They have implicit faith in their own strength of character, implicit faith in their ability at all times to resist temptation, at all times to stand erect and never be warped by any consideration of wrong. Those gentlemen are strong and fixed in their moral purpose of uprightness. They are so formed and fixed in that that they do not see why other men should be weak, or should ever totter. All men are not alike in their natures. There are men who are strong at one hour of their lives, and will be caught in a moment of weakness in another and totter and fall. It is for the protection of that class of men, sir, that we seek to engraft this in our constitution. Those who are in favor of striking this section out do not need such a section to protect them, because their own fixity of purpose and firmness of character is a sufficient guarantee at all times. They have no weaknesses; they are always right, those men. Then I say this section is not for the purpose of protecting them, but it is for the purpose of protecting those who are not so strong and firm. It is for the protection of men who have their weak moments and who will vacillate at times. It is for that purpose that this section is offered. Now, that, it has been reasoned from another standpoint that it seems to me is entirely wrong, and that is this. It has been argued by a gentleman in favor of striking this out in a way that would leave one to infer that those favorable to the section were hostile to railroads, that they were fighting railroads. I cannot see how it is to be tortured into such a construction as that, simply for the reason, if the railroad companies intend to be honest, if they do not seek to influence state and county officers, it is for their protection to keep from issuing a large number of passes —it is a protection against the bums of the country. If their purpose is honest, if they do not seek to influence men, if it is so implied bribery, if, I say, they had nothing to gain by issuing those passes, then I say these people stand as the friends of the railroad and transportation companies. If that is the idea of it, that they have no sinister design except what appears on the face of it, then I say we are seeking to protect them from issuing passes and being imposed upon by a lot of men who do not wish to pay their fares. If the railroad companies have to pay their tax to the government, and meet their obligations, why, let us make all and every one who rides upon their roads and their cars, pay tribute to them. If they do, then we are not hostile to the railroad company. We stand as the friends of the railroad companies against the assaults and attacks of those men who desire to strike that out. That seems to me to be the rational view of it. But the position the friends of this measure take on this Section 10 is that there is a sinister design on the part of transportation companies to influence these weak-minded men who belong to legislative bodies in particular as affecting their interest That is the whole theory upon which it is argued, that there is a covert meaning in issuing these passes, that is to say that they will attempt to influence political bodies and officials in their favor. It is understood that nothing pays these transportation companies so well as the passes they issue, that they get much larger pay in the end for hauling men free of charge than they do where they receive the ordinary fare. Why, then, sir, upon that same principle, there is one of the best published magazines in the United States—probably the largest, if not the largest corps of writers in the United States—adopted that view of it, prohibiting their corps of writers from accepting any free transportation from any steamboat or railroad in the United States.

Mr. Burleigh, of Custer: What magazine?

Mr. Robinson, of Deer Lodge: It is Harper's Magazine. The corps of writers that belong to the Monthly, the Weekly, and the Bazaar. They prohibit any of their corps of writers from accepting a pass or transportation from any company whatever. The reason for doing that is this; that it is human nature that the spirit of gratitude should go out from those who receive favors to their benefactors Their object is to leave their writers free to criticise everything they think is wrong, upholding what they think is right. They desire their corps of writers, in traveling over those railroads or steamboats, if they see a public abuse, they desire them to speak fully of it, speak freely and criticise justly everything in connection with it because if it is understood that a man, a writer, is riding over the lines of any railroad, transportation company or steamboat company, free of charge, they feel a certain obligation not to criticise harshly or speak or write of them as they would if left entirely untrammeled. My remarks have no application to the strong moral will of those men who are seeking to strike this out, because they are a superior class of men and it is not necessary to impugn their motives; but I am speaking in behalf of the weak mortals. Now, I say, those people, the Harpers, have good motives for refusing to allow their writers to accept passes for those reasons. Then, if as a business policy they apply that test to it, why should not we consider the same proposition in the same light here. I say that the railroads use this system for the purpose of influencing legislation, that is the whole and sole purpose of it, and I will ask every gentlemen who is in favor of striking this out, how many of you have paid your own fare over the railroad to this convention. I imagine even some of the stern and sturdy ones who cannot be influenced, that they have come on passes, as firm as they are. I say, then, let us not trust legislatures too far. It is all right in theory, but practice oftentimes has a marked difference from theory If all men were as they should be, if they were models, as my friend from Custer, true men, then we would not insist very strongly upon this proposition, but we would trust them in danger because we would know that their purity of character and uprightness would be a guarantee against their falling by the wayside. But all men are not so. We have seen examples or legislatures, sir. I have. I can call to mind instances of it, that, when legislation affecting railroads has been submitted to a fair and candid vote, where they were sure the vote would have been the three to one against it, where the measure was kept swinging for two weeks under one specious pretext or another, they would keep hammering at it until they would get a majority of votes for it, and some of them would be caught at it. Now, these are not such men as my friend from Custer, but they were of the weak, vacillating kind. Why, sir, more than that, I remember when a certain measure affecting a certain railroad was being considered in the Legislative Assembly of this Territory, there was one day when the members were bitterly opposed to it, but they were invited to a champagne supper when the Governor of Montana and a lot of railroad magnates and the Governor were there. They were weak minded men. It flattered them to be with that class of men. Now, I say that it is a dangerous thing to allow this system of passes, whenever a champagne supper, to my certain knowledge, wooed them right over to those corporations. And let me say, gentlemen, upon this proposition, whenever these questions are involved, whenever a man waivers, whenever he hesitates a moment, wherever he changes his feelings, that change is just as certain and sure to go to the corporations as the sun is certain to set down towards the west. It is absolutely certain, I have never known an instance where a man who was voting his sentiments, whenever he made any change at all, I have yet to learn where a man changed and turned against railroad corporations. Then, with these facts staring us in the face, it is not well for our future protection, to place it beyond the temptation of man. I see no impropriety in incorporating this provision in our constitution. It will save us a great deal of trouble. It will save us from ourselves at some time unexpectedly. For these reasons, sirs, I am opposed to striking out this section and in favor of retaining Section No. 10 in our constitution. As a matter of faith not because the Legislature cannot take care of itself. If these legislators were all gentlemen of the stability of character of my friend from Custer, they would be all right, but all men are not so, and I admire my friend from Custer and the class of men to which he belongs—I admire them for their traits of character; but, speaking for a different class of men, and weaker minded men, I think we should engraft this in the constitution. Sir, for these reasons, I am in favor of Section 10 and opposed to striking it out.

Mr. Reek, of Deer Lodge: I have just one word to say in regard to the gentlemen paying their fares to this convention. I will say that I paid my fare here and I am in favor of striking out that section, because it is pure legislation.

Mr. Conrad, of Choteau: The debate on this question is getting a little monotonous, and if it is kept up, I think it will leave nobody to talk to.

Mr. Clark, of Silver Bow: I move the committee do now rise and report.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Clark) and the division being called, the same was declared carried by a vote of thirty-five (35) in the affirmative to a vote of twenty-seven (27) in the negative.

IN CONVENTION

President Clark: In the chair, the Convention was called to order.

Mr. J. R. Toole of Deer Lodge: Mr. President your Committee of the Whole having had in consideration Proposition No. 28, have made progress, and ask leave for further time in which to make report.

The President: The Chairman of the Committee of the Whole, reports that the Committee have had under consideration Proposition No. 28 and ask for further time in which to make report.

Mr Hogan of Silver Bow: I move we take recess until two o'clock.

The motion was seconded.

Mr. Hershfied of Lewis & Cark: I move to amend by making it three o'clock.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clark (Mr Hershfield) and a vote being taken the same was declared lost.

The President: The question now is upon the motion of taking recess until two o'clock.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

Thursday August 1st, 1889.

Afternoon Session.

The Convention was called to order by the President at two o'clock P. M.

The Clerk called the roll.

The President: The Convention, upon taking a recess had under consideration General Orders.

Mr. Callaway of Madison: I now move, sir, that the Convention reconsider the vote by which Section 4, Article on Taxation was adopted.

The motion was seconded.

The Chair stated the motion.

Mr. J. K. Toole of Lewis & Clarke: I listened to the argument made the other day upon this proposition—(interrupted).

The President: The Chair would suggest to the gentleman, that the question to reconsider is not a debatable question.

The Chair put the question on the motion of the Gentleman from Madison (Mr. Callaway and a division being called for, the same was declared carried by a vote of 35 in the affirmative to 19 in the negative.

The President: The question is upon the original proposition now before the Convention. The Clerk will read Section 4 and then the gentleman from Lewis & Clark will have the floor.

The Clerk read Section 4 on the Article of Taxation and Revenues as amended.

The President: This proposition now remains as though no action had been taken upon it, and it requires a motion to bring it forward.

Mr. Collins of Cascade: I move that the Section be indefinitely postponed

The motion was seconded.

The Chair stated the motion

Mr. J. K. Toole of Lewis & Clarke: Mr. President, if this proposition which it is proposed to insert in the Constitution would in any manner interfere with any plan now passed or projected upon the part of the United States, or with any plan which might be proposed or projected upon the part of the State of Montana, I should not be in favor of this convention having anything to do with it. But it has no such purpose. It was never destined that by the insertion of this in the constitution of the State, that the United States or that the State of Montana should in any way be interfered with in any proposed plans. This proposition is not in the interest of any canal or ditch company, but it is in the interest of the settlers of the State of Montana: it is in the interest of those people whom we have invited here to make homes, to settle up this country, and if possible to reclaim arid regions and make them productive, so that not only the land but the crops upon it, may respond and bear their just proportions of the public burdens of the state. It is to protect us against the ditch companies, against their extortion in the charges for the use of water; it is to prevent a Canal Company or Ditch Company from discriminating from the citizens of this state. I say that we will sell water to one individual and refuse to sell it to another, so that we charge one man a given price for the water and charge another a different one. Now, if I have my way with reference to this matter, I believe that I would desire that the Government of the United States would take charge of the whole question of irrigation in these arid regions; that it should not only build the reservoirs, but that it should provide for keepng the reservoirs and the ditches in proper repair. and provide the necessary officers for the equal and just distribution of that water. I would rather see that, and see the homestead law repealed, and all of the land laws repealed, so far as these arid regions are concerned, and that the land which is now unproductive might be put upon the market and sold for the highest price. If this was done, in my opinion, men who now, by means of private capital are enabled to claim land to build homes and make farms, would be able to build and for a lesser amount to purchase the lands of the United States and have them all ready in a condition for irrigation. I believe that the amount, the increase, and the sale of lands by the United States, would more than justify the expenditure upon their part; but I am very much like the gentleman from Silver Bow (Judge Knowles) with reference to this matter. I think it may be said that it will be long in the future before the United States will ever commit itself to such a policy as this I know enough of the agitation of the question to know that it will take years before the thing is finally consummated if indeed it ever will be, and that for many years the most that can be expected will be that the government will make the necessary surveys and locate the sites for the reservoirs and reserve them under the land laws of the United States. Now I say that this proposition which is proposed here, is in the interest of this territory; that it is an invitation to the settlement of what are now the arid lands of this country. Can it possibly injure anybody? Without it—without the provision which is here made, which brings these people directly under the control of the state by declaring it to be a public use. and under the control of the purchase price of the water and its use generally, not into the hands of the Board of County Commissioners—for it seems that the gentleman from Cascade and the gentleman from Lewis & Clarke have grave apprehensions that the County Commissioners could not be trusted in this matter, but it puts it in the Board of County Commissioners or such other officers as this constitution shall provide. Let there be a board, if you please, whose exclusive duty and authority it shall be to look after and control this matter. Without it what have you got? You have a statute which authorizes the appropriation of water by anybody for any useful purpose, and with no sort of restriction on it, except that the Board of County Commissioners may regulate its price. Here. we establish by a constitutional provision, that this shall be a public use, that we shall not only have the right to regulate the price, but that we shall have the right to go further and say, "You shall make no unjust discrimination by selling to one individual and refusing to sell to another." We protect ourselves, not only against extortionate rates of corporations, that would engage in the construction of those enterprises, but we provide a protection in the other respects which I have mentioned. How is it going to interfere with the state? How is it going to interfere with the government? Does the gentleman from Cascade believe with such restrictions as these placed upon them that corporations are going to rush in here at a rapid rate and appropriate all of the waters of the great streams of this territory so that the government will have none when the time comes? I take it that corporations, like individuals, transact business from a business standpoint, and that they are not going to be so swift to avail themselves of the benefit of a statute which is now made in their interests but in the interests of the protection of the people by submitting themselves so readily to these constitutional provisions; because this article provides that before they shall have the benefit of taxation upon their net proceeds that they shall file with the Secretary of State, in binding form, a written consent that they accept the provisions of this article, as well as the other provisions of this constitution. Now, if it is in the power of the people of the state, by an officer delegated with the duty of controlling this matter, to protect themselves against these corporations, I take it that the corporations themselves are not going to be particularly anxious to avail themselves of the benefits of it. If I thought that under the constitution of the United States, that it would be possible to exempt this property absolutely from taxation, I would be willing to do it, not that it would benefit the concern itself, but that, by reason of that, it would stimulate an enterprise in this country which would bring into existence new values, new interests and new properties which, so far as the taxation of them is concerned, *would more than equalize and smooth over any equality there may be, by* reason of this exemption. Without it, millions of acres of land in this territory, as has been frequently stated by the gentleman upon this floor, are perfectly barren and useless and respond in no sense whatever for the payment of taxes. But, if the water can be brought here, if corporations are willing to avail themselves of the benefit of this, which I doubt very much, the result of it would be, that every time a farm is created, every time a crop is raised, a new value, a new product, something is brought into life which will help to bear the burdens of taxation. Our condition, sir, is an anomalous one. We happened to be in a section of country, admitted by everybody to be an arid region. We cannot rely upon rain fall for producing our crops. It is a proposition staring us in the face, and admitted by everybody that we have got to provide for it by some method or by some means. As I said before if this proposition interfered with the State in any way, if it interfered with any plan or project on the part of the government I would be opposed to it but it is entirely consistent with everything that may be claimed both on the part of the state and the general government in this respect. I was somewhat surprised to see the zeal and energy with which the gentleman from Cascade opposed this matter. I fail to see in his argument a single reason or justification for it; why he was so zealous in his opposition to it, when he characterized the proposition which was presented as something which had been hatched out here during the recess by somebody. As was said by Judge Knowles, it was simply an effort to present something in what was conceived to be an acceptable form of this convention. I take it I am willing to make the declaration anyhow, whether it be true or not, that I give the gentleman the same credit that I do every other member of this convention so far as the propositions which are submitted here are concerned, that he has an "eye single and warm and devoted heart" to what he considers to be the best interests of the people of this state; so far as any lobbying or anything of that kind or character is concerned, it was never known or ever heard of, unless it be that I was taken for a lobbyist myself sitting so far behind here, as was suggested to me by Judge Dixon yesterday. I think Mr. President, that this amendment ought to be adopted. It can do no possible harm, and in my judgment will be an invitation to settlers to come and utilize the waters of this country and reclaim the arid lands.

Mr. Myers of Yellowstone: I have no desire to take up the valuable time of this convention in attempting to make any talk on this subject and, if the provisions in Section 2, or rather the last line of Section 2 read thus: "The Legislative Assembly may, in its discretion, exempt from taxation other property than that herein specified, but all exemption shall be by general law." If that section had not been stricken out from Section 2, I imagine there would be no strenuous efforts here on the part of a few individuals to secure the adoption of this Section 4.

The remedy which we have would be to go to the Legislature and ask them to exempt such property as ditch property, reservoirs and canals, etc. together with such other property as might be deemed advisable at the time But, as that chance was cut off, and the Legislature is prohibited now by the constitution and the State of Montana from entertaining a proposition of that kind in my judgment it becomes absolutely necessary to have this provision adopted in the constitution. I have no fear of corporations—(interrupted.)

Mr. Collins of Cascade: I would state that it is my intention to insert in the Article on Miscellaneous Subjects that part of the section that was stricken out, when it comes before the convention again.

Mr. Myers of Yellowstone If I understand the rules, after we have once acted upon a matter, it is barred from further consideration, except by unanimous consent, and, as we are on this now, I think we ought to adopt this section, on the score of forbidding the Legislature the privilege of exempting property. Now, we all know the trouble with this country for a number of years. People who are familiar with the geography of this country and the innumerable water courses and the sources of supply of this quantity that flows down these water courses at certain seasons of the year know that there is no such thing as monopolizing the quantity of water provided that storage houses or reservoirs are constructed for the purpose of preserving that water as was so ably discussed by my friend Dr. Burleigh yesterday. Now, it is a known fact with people who have had any experience with ditches, with a very few exceptions, in this territory, that it is dead capital. They know that there are very little returns from any of the ditches, save and except in the creation of property. They render themselves less valuable for what they produce. The products enlarge our markets, feed our stock, etc, and in that way become valuable to the state. But as an investment there is no inducement, and hence it becomes necessary, in order to induce people to invest money in this kind of speculation that they shall be benefited in some way, or at any rate exempted from the burdens of taxation to a certain or limited extent. Ditch Companies are forming over the country, combinations of farmers and ranch men, for the purpose of conducting water through their land They form a stock company of $10,000, $20,000, or $25,000 perhaps more, or less, they go to work and construct their ditches, they do the work themselves to a certain extent and construct their ditches and flow this water on to their lands It is a corporation, it is true They have a system and a superintendent, and it is conducted the same as any other corporation, by a manager Now, if their property is to be taxed as other property is to be fixed, with reference to its cost or its value as it might be sold to combinations of a similar character who might desire to use the water, I undertake to say that it would be stopped and for many years prevent the construction of these ditches and canals; but, on the other hand if they did not have to pay their tax, then this capital that came in many parts of the country to construct these ditches and reservoirs for the storage of water would thereby very materially increase the agricultural products of this country And as this matter of reservoirs and storage of water is being discussed and being developed, being as it were forged into some kind of form, I think that people who have an inclination or desire in that direction should be encouraged. I am satisfied from the information that I have been able to gather from gentlemen on this floor and from talking with one of the members of this Congressional Committee who is in the city at the present time, Senator Plum, that by a little effort on the part of the people in the arid districts which I am satisfied will be made, that it will be no trouble to secure from the government ample grants for reservoirs and the construction and the right of way over the government lands—the use of government lands for these reservoirs—and that it will be no trouble to secure a grant sufficient to cover all lands required for that purpose from the government of the United States Senator Plum, of Kansas, says that from information and representations made to him, that he is satisfied that is the proper procedure at the present time. Now then, if the government will take that much interest in it—the government of the United States—that it will grant these lands for reservoirs, it seems to me that the people of Montana should not hesitate to provide some means whereby the capital invested in these reservoirs and ditches necessary to conduct that water from these reservoirs on to the land should not be burdened by taxation, at any rate not further than suggested in that Section, that is to tax the net income of those companies and ditches. It is a plain proposition that it should be the net income of those ditches. I doubt if there will be any net income to tax in many years; hence it will operate as an exemption; and hence it is a question whether it is advisable to do so or not. In my judgment then, it is absolutely necessary for the agricultural districts, the stock growing districts along the base of the Rocky Mountains in the eastern part of the territory, and also in some sections of the western part, that some sort of provision of this kind be adopted or that the clause in Section 2, be restored. It seems to me that this fully covers the ground and will be satisfactory, and I hope that the general motion to lay this proposition on the table will not be carried, but I hope that it will be put upon its final passage and become a part of the constitution of the State of Montana.

Mr. Stapleton of Silver Bow: This is a matter that I suppose every one feels a deep interest in. I do not believe we have a more important question coming before this convention and it is a matter of such great importance that I am not in favor of taking it up now, and am not in favor of finally passing it at all at this time. Now, when the members of this convention were elected, there was no thought upon the part of the people that they were going to pass upon a question of this character. This is purely Legislation. I think there is no lawyer in this hall, that will not admit that is a matter purely of legislation, and, therefore, it is and ought to be left to the Legislature Everything that it is proposed to do by this Section can be done by the Legislature.

Mr. Myers of Yellowstone: Have we not already tied the hands of the Legislature by refusing to allow them to exempt property from taxation?

Mr. Stapleton, of Silver Bow· Possibly, and I am in favor of that, Mr. President. I am not in favor of allowing the Legislature to exempt property from taxation. The principle is that all property should pay its just and proportionate share of taxation. and the only reason that we exempt any is because it is a public benefit and this would not be a public benefit even on the premises upon which the gentlemen have argued in favor of the proposition in this Section. It could not be a matter of general and public interest to Montana. It would only affect locally part of the people, for instance, on the Missouri; that would only affect after all, a small section of the country and, therefor it is not of general interest to the people of Montana, and I would not be in favor of exempting from taxation. But, what I was going to say. is this. That this is something being agitated this year on account of the very dry season which has caused a great deal of talk about building large ditches and reservoirs and in doing everything that possibly can be done to better the irrigation of the lands of this arid section. Now, they have only begun to agitate this question, because before this year there has been water enough for everybody and this has been a very vexed question. Now, if we leave this to the Legislature, the people will have time to talk it up and know what they want and perhaps all the Legislators then who are elected to the Legislature to pass laws, will know what the wishes of their constituents are on this subject, because it will be made an issue and in that way can reflect the wishes of the people. Now, this convention is not in a position to do that. The fact is that this is Legislation and we have not had sufficient time to consider it to know what the final result ought to be. Now I say that that Legislature can do everything connected with this matter that is necessary and I am not in favor of exempting them from taxation so far as that is concerned. Why, Mr. President, look how things have been conducted heretofore and there has been no cause of complaint. There were no grounds for any. A man goes out on the arid plain that is worth nothing almost, at least for the government price. He goes to work at his own expense either by his labor or by the expenditure of his money and digs a ditch from some creek or some river and throws the water upon that land and in that way makes it productive. Now, Mr. President, that land was not really worth anything although he paid a dollar and a quarter an acre for it; but he only pays that because he knows that he can get this water upon it. Now, by digging this ditch and running it upon this piece of land, it makes it productive. He raises all the cereals and all the things that can be raised in this latitude and in that way he makes it worth $10, $20, $25 and $50 an acre. When the assessor comes around, he assesses that property for whatever the value of it is, which was made by this ditch. Now, I ask if a man is not paying taxation on his ditch. Everybody can see that, because is it not only by virtue of that ditch that he has made this property worth $40, $50 and $60 an acre or whatever it is worth.

Mr. Myers of Yellowstone: I would like to inquire if through this section in any manner, it would affect the price of the land, made more valuable by the building of these ditches and reservoirs? We do not propose to exempt the land. It is only to exempt the ditch on what it pays on the net proceeds

Mr. Stapleton of Silver Bow: My answer to that is, Mr. President that you allow companies and individuals to go to work and build a ditch. They sell their water for a certain price and are exempted from taxation and they make that land productive that was not productive before. Now, the people that buy that water, who pay two dollars an inch, or whatever they pay for it, they are the men who pay the tax on the enhanced value upon that land. Suppose that land is made valuable, who pays the tax? Is it the man who buys the water and who makes use of it, or is it the man who owns the ditch and sells the water? I venture to say it is the man who buys the water and who makes use of it to cultivate his land who pays all the additional taxation. Now, I say Mr. President, taxes fall where they should not fall, at least they should be divided and, if you make the ditch pay anything it will not be necessary for the land to pay all the taxes. But the way you propose is that the land should pay all the enhanced value and the ditch itself shall not pay anything whatever. Now, I believe that money, in whatever business it is, should be taxed, tax all alike and the man who puts his money in a ditch should pay a tax on it the same as the man who puts his money in a farm. I do not believe it is right to exempt the ditch. Now, one of the arguments that has been used here by my friend Mr. Toole and others was that this can surely do no harm. Now, I think it might possibly do a great deal of harm. I say that we have not had time to reflect upon it. People do not know what they want today. But, what they say is that we are so tying up the hands of a company or corporation who want to build a ditch that they will not accept the terms, proposed here. Now, if they will not accept the terms what are we passing the section for? What benefit is to be had by it? We want such a law as will be just and equitable between the men who own the ditches and the men who own the land, and, if the argument is worth anything at all and they tell you that we are passing a law and we are trying to pass a law that no one will accept this is just as objectionable as the other is. If the terms of this section are so harsh that no one can build a ditch under it and live, we have no right to pass it at all, because that is an unjust discrimination against some one and I do not care which horn of the dilemma you take, it is wrong to incorporate this section of the constitution. Now, I believe that we should leave this to the Legislature, that the people may reflect upon it and know what they want I do say that this is Legislation and I hope this motion will be sustained and this matter will be indefinitely postponed.

Mr. Knowles, of Silver Bow: I must say that I am considerably mystified upon the question, of what is Legislation and what are legitimate constitutional provisions, from what the gentlemen say. Now, we consider that it is perfectly proper in this constitution to have an article upon the subject of taxation, and to provide how property shall be taxed. And then we have provided a special mode in which mining property shall be taxed. Now, that is all legitimate, and perfectly constitutional. It belongs to the constitution. In my judgment it is not legislation at all Then, we come down to this matter. The gentleman says this can all be left to the Legislature, for the Legislature to do just exactly what they have a mind to, on this subject. Well now, if we do not make a special exception in relation to these water ditches and provide an amendment that they can be taxed in this way, I would like to know how you are going to tax them any different from any other property, you are bound down here by the rules you have made here and you have struck out this clause that they may exempt other property than is specified here in this constitution. Now, what we are doing today is just simply providing a rule of taxation, and if you leave it under the general rule it has got to be taxed under the general rule. There is another matter. Now I know each Statute provides that corporations taking out water to sell, that it may be regulated by the County Commissioners. But how about companies or persons? Perhaps when a person incorporates under the law and accepting the provisions of the corporation law they may be found by that provision in our law, but if you make any provision in your constitution in this matter can you go to a man and say, "here, you own this water, you have appropriated it; it is your water and you are selling it here but we will provide by law that you shall sell it for just a certain price or will put this matter in the hands of the County Commissioners." Can you go to a merchant and do that? Would you say that was in the province of the legislative power to go to a merchant and do that? If you can go to a merchant or go to a farmer and say what he shall sell his products at, a certain price, why, you should go back in this matter to the days of the old sumptuary laws which prescribed what a man should wear and what he should get for his silver and what he should give for the food he ate and drank. Now, a good many gentlemen that stand with me in this matter really do not care very much about this law except as we believe it would be for the welfare and prosperity of the agricultural interests of this Territory, and so far as that has been concerned, we have been in favor of it. We would like to see every section of Montana prosper. Whatever is the prosperity of one section of the country is our prosperity, because we are all Montanians. If they prosper down by Great Falls, the people of Butte take pride in that because that is a part of their country and the idea of selecting out here certain sections of the country and saying that we shall not provide in any way for the prosperity and development of that country, because that belongs to a little section of country where we do not live, and because we are providing for the special development of the agricultural regions and not of the mining regions? Why, gentlemen, I have no thought of taxing the constitution in that way. If we can fix up a constitution to make the agricultural portions of Montana prosperous, I would like to do it. I would feel that, as a Montanan, I was doing my duty and that it was not a local matter—that it was for the good of the whole Territory—that all parts of it should flourish and prosper. There are a great many things that have been said about this matter that I do not comprehend and understand and I cannot comprehend or understand how any man in the agricultural sections of this territory would be opposed to this law unless they think that by allowing in a constitution that these ditches should be taxed only on their net income, and providing that the rates allowed would be a grinding monopoly upon the people, that they should be fixed by the County Commissioners, &c — I cannot see unless they think that that is serving in the same way, and that these ditches should just be put on the same basis as other property. If they are all of that opinion, why, they know more about their section of country than we do and I am in favor of letting them have their way. Now, I think I have said all I will ever say upon this question.

Mr. Cooper of Gallatin: I hope the motion of the gentleman of Cascade to indefinitely postpone this proposition will not prevail. Perhaps if I lived in a section of the country similar to that in which the gentleman lives, that enjoys the reputation of being the peach belt section which requires no artificial irrigation, I might perhaps stand in the same position in which he does. But, unfortunately, I come from a section of the country which it has pleased Professor Hayden to style "the Egypt of America," Gallatin Valley. We cannot raise very much there without irrigation and that is one reason why I am advocating this proposition and because our people want to have work and demand some relief. Of course, they do not say what they want but I have studied this matter myself thoroughly in all its different phases, and I am willing and free to say that this is the only propositon that has come to my mind that would give them any relief. I am very much astonished to hear the gentleman from Silver Bow, Mr. Stapleton, a gentleman so learned and capable of understanding all the wants of this territory—I am astonished to hear him say here that a matter of this kind would not be of general benefit. I ask him and ask every gentleman if the importance of the mines of this Territory is not of general benefit; if the importance of the stock interest of this Territory is not of general benefit and also if the importance of the agricultural interests does not redound to the general welfare of this whole commonwealth. It seems to me to be a plain proposition.

That where there is a proposition of importance in one portion of this Territory that it ought to be grasped and it ought to be encouraged by men who are here representing different industries. It seems to me that we are here representing only the industries of Montana, the good and welfare of Montana, and I hope that this proposition will receive the consideration of this convention and that they will vote against the motion of the gentleman from Cascade to postpone indefinitely. I want to say that I appreciate and our people will appreciate the efforts upon this floor of disinterested gentlemen from the mining sections of this Territory, and we will not forget them I am glad to see them take a broad and expansive view of this question, and say they are for the general interests of this territory.

Mr A. J. Burns, of Lewis & Clarke: I think it would be perhaps well to have corporations build ditches and canals for the purpose of irrigation, but they would only take up the profits in this Territory and would leave the matter in a worse condition for some future time. We have in this Territory some twenty million acres of arid land and, according to the best information that I could get, there would be only three million acres of this arid land that would be irrigated by private means or private operations. The balance of that would be left either unirrigated or the state would have to irrigate it by some other means. Now, I do not believe in letting outside capital come into this Territory for the purpose of taking up all the best waters in the state and leaving the state hereafter or the United States to take up the difficult and expensive ways in the future. For that reason I am in favor of this proposition.

Mr. Middleton, of Custer: Of this proposition at the outset I was disposed to think that all the provisions there should to put in the constitution as to the matter of exemption was simply to provide that the Legislature might enact reasonable exemption laws, and I regret sincerely that I was not present to hear the discusson of this section when it was under consideration before; but having listened to the discussion today and having given this matter some little thought and being to some extent familiar with the condition with a portion at least, of the lands of this territory that are susceptible to irrigation, I am disposed to favor the adoption of this section. I had the pleasure on last Saturday of riding down on the train from here to Miles City with Senator Stewart, Chairman of the Irrigation Committee, and when we were passing down through the Yellowstone Valley from Livingston all the way to Miles we were approaching and touching upon the Tongue River Valley, and that gentleman was elated and surprised that there were so many hundreds of thousands of acres there that were susceptible to irrigation without any reservoir system, but simply by means of ditches, from the fact that the fall of the Yellowstone River is sufficient to take out a ditch anywhere and carry it round along eighteen or twenty or perhaps fifty miles so that you could put the water on the table lands one hundred feet above the river at this point. Now, it has been suggested here by Mr. Stapleton of Silver Bow, that it is because this is a particularly dry season that this matter is agitated at this time I submit that all of those lands in that valley and the Tongue River Valley, and so far as I know in most of the river bottoms and valley of this Territory, are practically worthless lands without some means of artificial reclamation. Now, then, those lands can be reclaimed by means of ditches, and it is a demonstrated fact that the inherent properties of the soil on the two rivers that I mentioned are such that with a sufficient amount of water it will grow any kind of products and grow them in abundance If those lands can be made productive and valuable by means of irrigation, is it not wise for us to provide as a fundamental proposition and make it a part of the constitution that any person or company or corporation who will come in and go to work and construct a ditch that will render those lands more valuable, render them more productive, and hence place them where they will bring in great revenues to the counties and to the state—is it not desirable to hold out such inducements as we can, can there be a stronger inducement held out than thus making it a constitutional provision? Now, it is true that in a sense it savors of legislation perhaps more than of fundamental law, but, if you will take into consideration this fact that an irrigating ditch when once established is a permanent thing or presumably permanent, that there is nothing so uncertain as a Legislature—this Legislature will build up and in the next one or two years hence will tear down; this Legislature will provide exemption laws and the

Legislature two years hence would repeal them, that no person or corporation would feel justified in coming in here under these circumstances, even if that were held out to them as an inducement by reason of a law on the statute books, for fear that very law might be repealed at the next session. And, in order that we may enact something that the people can rely upon, in order that these arid lands may be reclaimed, in order that all portions of the Territory may be treated alike in this matter, it seems to me that this is a wise provision. Now, from what information I have, I would have felt disposed to oppose, if I had been here, the matter of exempting mining property from taxation, although I am not prepared to say that the provision of this proposition which was adopted relating to the matter of the exemption of mines was not right—it may be a proper incentive to capital and investment and to the development of the mines in the Territory; but, if it is an incentive, should it not be certainly an incentive in the agricultural district of this state that the persons may have such inducements as we can hold out to them to come in here and construct and maintain these ditches and render these lands valuable, for, as a matter of fact, they are practically valueless now except as for grazing purposes and not very valuable for that for on the river bottoms there is very little grazing for cattle anywhere. And, in view of those facts, I am disposed to think this section as it stands is a good one and should be incorporated into the constitution.

Mr. Maginnis, of Lewis & Clarke: I dislike to trouble the convention on this subject and will only do so in a few short words. The whole debate of this subject shows that is it purely a legislative proposition. The facts and figures that have been arrayed—the arguments that have been arrayed on this side—are facts and arguments that should have been made in a Legislature and not in a convention, and I will preface my proposition primarily by saying that I am in favor of leaving this whole matter with the Legislature and people of Montana. Gentlemen say that we have repealed a section in the constitution which gives the Legislature that power. The constitution has not passed from the hands of this convention. There are other schedules to which such a proposition will be germane, and if it is deemed wise by the convention, I am in favor of placing such a provision in the constitution as will allow future Legislatures to consider this matter in a manner such as we cannot. The question of exemptions is a dangerous and ticklish one at best; it is one upon which the people who bear the burdens of a country are rightfully sensitive and outside of charitable and educational institutions themselves, only exemption from the ordinary methods of taxation provided for in this constitution, for I deny that the section in regard to the taxation of mines is in any way an exemption of mining from taxation. It brings us simply to the fact, whether we make this property exempt from taxation. Now, my friend, Mr. Toole, for whom I have the greatest respect, says he wishes it were possible to exempt it forever by the laws and the constitution of the United States.

Mr. J. K. Toole, of Lewis & Clarke: Not forever.

Mr. Maginnis of Lewis & Clarke: That was what I understood.

Mr. J. K. Toole, of Lewis & Clarke: If it were possible to exempt property under the constitution of the United States from taxation, I would be very glad to do it until these lands were reclaimed.

Mr. Maginnis, of Lewis & Clarke: Now, Mr. Chairman, it seems to me that if there is any kind of property that ought not to be exempted from taxation, it is ditch property. You take a man that has a manufactory. He employs a certain number of men: a great many people are at work all the time; the expenses are great; the incomes are very little over the expenditures generally. But take these ditches when once built. I know that the gentleman will say that the repairs to these ditches are always a continual tax upon the company. So they are.

Mr. Cooper, of Gallatin: I want to ask you gentlemen if it is not a fact that the creation of these ditches creates the property. There is no property there until the ditches are built, and that creates what property there is.

Mr. Maginnis, of Lewis & Clarke: I will go on to meet that. Of course, however, as the gentleman from Yellowstone showed the other day, the keeping up of repairs to these ditches was a great tax. So they are when they are built in a flimsy way. But let these ditches be properly dug; instead of temporary flumes, let them have masonry flumes such as have been constructed in other countries. Then where are the expenses of these companies? These valuable franchises which you do not tax exist and they have a revenue without any great burden on their part, as the old formula goes, "as long as grass grows and water rolls." And it does seem to me, after all, that of all the species of property in the world, that that is the species of property that ought to bear its reasonable share of taxation Nor do I agree with my friend in saying that it would be a good thing to repeal the homestead laws and let the people build these ditches.

Mr. J. K. Toole, of Lewis & Clarke: The gentleman misquotes me again. I said the land laws of the United States, except the homestead laws.

Mr. Maginnis, of Lewis & Clarke. I am very glad to have the correction made, because I know that my friend always has been and always will be in favor of the rights of the people. I have seen circumstances which demonstrated that fact to me, and consequently, I was astonished when the declaration came from him that he would be in favor of wiping out the land system of the United States, which is making homes for hundreds today. Why, Mr. President, I need not dwell upon the evils which this proposed system of landlordism and rent would imply. The word is full of examples of it. The early gardens and granaries of this world, the very cradles of civilization were countries that were irrigated. These ditches were built by the people. Kings and monarchs and nobles finally got hold of these franchises—these water rights—not only of Egypt, but in Assyria and Mesapotamia, and they tax the people out of those lands which were once the gardens and granaries of all the world, blooming like an Eden, the very cradle of civilization of the human race and their barren and desolate fields are baking in the sun today. I have a hope that there will be no personal feelings about this matter. I do not care whether any corporation wants or does not want it so. We stand on larger grounds and look to the future. It is in the discussion of systems and their effect upon posterity that this convention ought to be engaged. I say, Mr Chairman and gentlemen, it would be no benefit to the settler to invite him here on any false theory, to get his home under water from one of those corporations, and when he had reclaimed that land and built his orchard and made his home, to have him evicted because he could not pay his water rates; his life wasted and he sent out a vagrant and a beggar from the country. I do not overdraw the picture, I am talking experience. I have read about its effects in Colorado and New Mexico. The President of this convention himself gave me an instance last evening which came under his own eyes in Arizona; and, my friends, it is only to avoid these dangers that I seriously ask the convention to pause before it goes into this matter of restricting, for this is a matter of legislation and should be left to the people and legislators of Montana to look after by and by. Why should we exempt these big ditches, the property of corporations from taxation, when we do not exempt the little ditches. Gentlemen say it will do no hurt Will it do no hurt to gobble up all the water, so that when these states or the United States come along they will find all these priority rights ahead of them, and they cannot engage in any general system of irrigation?

Mr. J K. Toole, of Lewis & Clarke· I understand this covers all kinds of ditches for sale, revenue or distribution, or any kind of use.

Mr. Maginnis, of Lewis & Clarke· It will interfere with the United States by taking up those water rights, because many of these little rivers like the Bitter Root, the Teton and Marias, from Gallatin and others can be completely appropriated by the companies before either the state or the United States could get a chance to outline any policy in this matter. Now, the proposition of the gentleman from Silver Bow, Mr. Sargent, was treated rather calmly about having a survey. I think the Legislature ought to have all the information on this subject possible before it acts and after United States has made these surveys, our people will have the information derived from that source, and it will give our future legislators all the information that they desire upon this question. Mr. President, I hope I am not unnecessarily importunate. It is because I regard this as a dangerous experiment that I stand here against friends who are as dear to me as any in this convention, and whose convictions are strong on the other side and opposed to it. I find that the gentlemen from the agricultural counties are divided upon it—clearly divided upon it. I talked with a gentleman last night who represented farmers in the very oldest and first settled valleys in this Territory and he told me they were against it.

And as the agricultural people are not united in favor of this proposition and as there is a division on it, why not let us so fix it that future legislators can amend it and not shut them off by the action of this convention —not approaching the matter here now, if the Governoment of the United States does grant these lands for reservoirs—if they come on and make these reservoirs, shall we turn over the results and the money of the whole people of the United States to any kind of person or corporation for his own gain. It seems to me that the argument made by my friend is right against the proposition that he would wish to have incorporated in this constitution. The very fact that the Government has taken hold of this matter—the very fact that a liberal spirit—(interrupted.)

Mr. Cooper. of Gallatin: I think if the gentleman will allow me, that he is entirely out of the line of this section that was adopted. I infer from his argument that he expects men to come out here and inaugurate a system of irrigation and use the water of these smaller streams and the various streams throughout the country. I do not contemplate that this is the object of this matter, the authorities simply make a beginning to demonstrate that the reservoiring or the system of sewering water—the sewerage system is practicable and will induce people to combine in inaugurating a system of sewage water.

Mr. Maginnis of Lewis & Clarke: I think I understand the reason of it, Mr. Chairman. The United States has a vast lot of land here that belongs to the United States. For years and years that land has been characterized as valueless—as of no value to the Government. Now, the Government of the United States, like any other sensible proprietor of property, wants to find out if that land is really valuable or if by any system or means it can be made valuable, and, Mr. Chairman, it is demonstrated to the satisfaction of Congress that it can be made valuable. What will be the next step of the Government of the United States? We have here millions of acres, that belong to us. We can get no revenue from them; there are no settlers upon them. Will it pay us to make a small expenditure, a small outlay in order that we may derive a large revenue from all this property? That will be the next question that will present itself to the Congress of the United States, and may we not hope that the practicable, broad and wise minds there will meet it with a liberal answer? Or, suppose they choose not to do it themselves? Suppose they say to this state, here, you take these Government lands. The Government will be the gainer if you populate them—if you raise crops and plant orchards and build houses on them; now, you take these arid lands; we will transmit them to you by a bill; in that bill we will put certain restrictions upon them so that you can never waste them or throw them away, or give them away to anybody, and we will allow you to take these lands and pledge the revenues that you derive from them to the support of canals, to be under state management and state control. And I undertake to say that such a system of irrigation covering all the valleys of this Territory—so comprehensive that it is beyond the conception of the imagination of gentlemen who have not thought much about it, so wise that it will do justice to everybody under it, so economical that every farmer and settler can profit by it, not only now, but for all time—can be carried out without any expense to the state or without its becoming obligated for any kind of indebtedness except that which the land irrigated will pay. But whether this be so or not, whether my ideas will be correct or not—whether this be just my dreams as the dreams of other gentlemen have pictured it—I do not undertake to say, and you gentlemen must know it, that this whole question is out of place here, and that we should relegate it to the Legislature and provide that the coming Legislature should deal with it

Mr. Ramsdell, of Missoula: I am profoundly surprised that such morbid sensitiveness should be developed at this particular time tending towards legislation. It seems to me that before Article No. 3 was passed, this morbid sensitiveness had not developed itself, and I must say right here that outside of the few gentlemen from the agricultural districts who are honestly and conscientiously opposed to it at this moment on material grounds, there are certain gentlemen from the mining sections who seem to oppose it on selfish grounds. And, further, coming from an agricultural section, I supported them in their efforts on behalf of the article that just passed in relation to mines, and I say right here in this convention, and I identify men who showed me to the contrary, that mining property is not bearing its proportion of taxation. Now, it seems to me, that if the representatives of the mining districts have secured this just and wise provision that they should have the courtesy and liberality to support this measure providing for means by which the lands that are now arid and of no use to the country shall become valuable to the state. Now, the dangers that would follow this provision have been declared in very flowery language. Why, if our forefathers in times past saw fit to subsidize the building of railroads that would develop our country, why should we not help the building of any other industry that will develop our country. I venture to say that the Northern Pacific Railroad, when it was first built in this country, had a more absolute control over the destinies of these people than any ditch or any 100 ditches ever built in Montana will ever receive.

Mr. Maginnis, of Lewis & Clarke: Would you be in favor of the Government, or the state, or the county subsidizing any railroad now?

Mr. Ramsdell, of Missoula: No, I would not, because I think they have outlived their usefulness, but there was a time when it was only fit and proper and there is a time today when it is anly fit and proper to encourage these irrigating ditches. And, further, it has been said here that it exempts a certain class of property, and that it is a dangerous precedent to establish. I think that it will be admitted by anyone that the large increase in taxable property which will necessarily follow the inauguration of this system refutes any argument that can be adduced in that direction. Now, I do not wish to say anything that is disparaging to mining: coming, as I do from an agricultural section, I look upon all the industries in the Territory of Montana with liberality and due regard, and I would not lend my vote or my voice to anything that might restrict or limit the growth of any industry. What I believe is that if there is an industry within the Territory of Montana that deserves the consideration of this Territory, it is the agricultural interests. If there is one industry that is prominent, that tends to develop and ennoble mankind,, it, is agriculture. It is only when mankind assumes the cultivation of agriculture and leaves off the garb of the savage, that he tends in a civilized direction. You have today a mining plant that is blooming in prosperity. Everything is rustle and bustle around and you are making money and everybody is imbued with the zeal inspired from the desire to accumulate money. Ten years hence, it is, perhaps, out of existence and it only lives in the memory of the men. It is not so with agriculture. The very fields that fed the hosts of Hannibal are today filling the granaries of that country as they were eighteen hundred or twenty-two hundred years ago. The Island of Sicily, although it is not as fertile today as it was in the early days of history, is still going through the routine of producing and sending its supplies into the granaries of Italy. It seems to me that if we give this question due consideration, that certain men of the mining countries who have gained their proposition—have passed it beyond the danger of being recalled—should at least give this a favorable consideration. There may be some dangers connected with it. In fact, I do not think there is any question of importance that has been introduced in this country but there are some dangers connected with it, and I think this argument is far-fetched and is a forced argument; and that it is an argument made here to conceal other and ulterior motives. And although the section that I represent will not be materially affected in this direction, I would like to see the motion passed, as I believe it will be of great advantage to other agricultural portions of Montana.

Mr. Dixon, of Silver Bow: I should have been perfectly willing to have allowed this proposition to pass without any comment on my part if it had not appeared to me to have been a misstatement and misrepresentation of both its provisions that has been so persistently made, that it looks as if it were made purposely. All that I desire for this proposition, so far as I am responsible for it, is a fair consideration of the bounds it involves, without any oratory or rant about matters that have no connection with it. What is the proposition contained here? Does it give to any corporation or to any person an inch or a drop of water that they do not have without it? Does it give to any person or any corporation a monopoly or an opportunity of monopolizing water that they do not have without it? Point it out to me, if it does? Where is it? It provides nothing whatever in regard to the appropriation of water. It leaves that just exactly where it stands now and where it always has stood under the laws of this Territory and under the rules and decisions of the courts. What is the use, then of gentlemen coming her and talking about monopoly and giving corporations the right of landlordism and rack-rent? What has that got to do with the proposition. Why, a man cannot take an inch of water that he could not take without it. It gives no man a right that is not open to everybody; it gives no corporation a privilege that will not be open to anyone in existence now or that will hereafter be created. What then, is the object of this provision when you throw aside all this talk that has nothing to do with it and come down to a sensible consideration of it. It is to encourage, so far as we can, something that is admittedly needed in this country—that is the distribution of water over this country by means of irrigation ditches. We give to no man or corporation which may go into that business a single privilege; on the contrary, we restrict him. To say that this is for the benefit of corporations—when it gives them no right whatever and only gives them a certain privilege when they comply with certain conditions which will be more favorable to the people than to the corporations,—it seems to me is useless chatter. If we want irrigation we should encourage it so far as we reasonably can. As has been well said here, the small streams of the country have been taken up. Something more now is required. The thing has got to be gone into on a large and expensive scale, and it is because it is beyond the reach of single individual enterprise, that it seems proper to encourage those to some extent who are willing to invest their capital in such enterprises. Now, gentlemen talk about the United States taking hold of this thing. If the United States ever takes hold of it in 10 years, it will be sooner than it does anything else. But that would not interfere with the United States or the state. If it would, I would like to have it pointed out. It interferes with nothing of that kind; it is only intended to give encouragement to a certain extent to persons who are willing to invest their money in the large enterprises which are now required for irrigation, and in return for that will require of them limitations and certain conditons, which, instead of giving them privileges, are nothing but restrictions. We require of them obedience to the provisions of the constitution; that is all that we want of them. We give them this privilege only upon condition that they comply with those restrictions. If they do not choose to comply with them, why, let them go on without complying with them and let their property go on and be subject to taxation as other property is. Now, take the large enterprise in digging a canal. It is uncertain at the commencement whether it will be a success; it is an experiment. Therefore, it would be an object to them until, at least, it was finished and completed, in order that they might be able to judge how profitable an enterprise it might be—it would be an advantage to them to be exempted from taxation. But, when it came to profits, if it comes within this law, then it would have to pay the state what it was able to pay according to its earnings. Now, the gentleman from Silver Bow, who argued this question, says that all the taxes would fall upon the land. Why, that seems to be a curious argument. He says, here is a ditch that makes the land worth $20 or $40 an acre. He says all that falls upon the land. The taxation does not fall simply upon the land. The net proceeds of the ditch must increase and how can you increase the value of that land without increasing the very medium through which it obtained its value? Now, the gentleman from Lewis & Clarke talks about putting power in the hands of corporations to take all this water and to enforce payment of water rates and to eject tenants and to practically own the land. He does not go far enough in his argument. He ought to be opposed to all ditches and all canals and all flumes. How does this affect the case in any one way or the other? Does this give any power of collecting rent?

Mr. Maginnis, of Lewis & Clarke: I am opposed to offering a premium to engage in the business.

Mr. Dixon, of Silver Bow: If it is as he says, what has it to do with this matter, because this matter does not affect that one way or the other. This does not enable a ditch company to collect its rent. The gentleman's argument goes too far. It would go to the extent that we should not dig any canals or any large ditches at all, because we might run into landlordism and cause oppression upon the agricultural interests. Well, now, it is a matter that may be considered, but not at all in connection with this provision. As I said before, Mr. President,—because I do not intend to detain the convention longer,—I want a consideration of the proposition upon its merits—not mixed up with all this eloquence and talk about matters that have nothing to do with it. This proposition is just the proposition which it is claimed will have the effect of increasing the number of canals and ditches that are constructed, thereby opening lands to cultivation and settlement—and to that extent it will be a benefit to the country. If the corporations choose to take advantage of his provision, then we say, you must comply with the requirements of the law. If they do not choose to conform with the law, then they can go without its benefit, and they must pay taxes upon their lands and property just as if no such provision was in existence. As I said before, all these matters that are mixed up in this proposition have nothing whatever to do with it, because it does not give a man the right to claim a single drop of water that he would not have without it. It only encourages a person or a corporation and gives him the privilege of putting it under the control of the people, or if he does not, then his ditch property stands on the same basis of taxation as any other.

Mr. Gibson, of Cascade: I believe in confining this question to its merits. I do not believe in indulging in violent language at all in the matter. I believe the question is just simply this: is it necessary to give a bonus to corporations for establishing irrigating canals, etc., in this state? But I think the question is to be narrowed and simmered down to that proposition—it is necessary to grant bonuses to corporations of this character in Montana? I believe it has been conceded upon this floor that no bonus has been granted to any system or any corporation whatever and there has been no intention to offer any except for this. Now, I claim, Mr. President, that there is capital in the United States, and if not in the United States, in London, ready to be embarked in this enterprise. If I am correctly informed the great irrigating ditches of California and Colorado and other territories have been carried out by capital from New York and London. I cannot understand why it should not be the same in this territory. I think it was Professor Adams who said that Montana had all of the water that could be conducted over the soil to the best of advantage, and I believe that this soil of Montana is better and more productive than the soil of any other of the territories. I do not think there is any question about this, and I think it is well understood. Now, I believe, as I have stated, that there is plenty of money waiting to be embarked in this enterprise. I have only to tell you, gentlemen, that down in Northern Montana already a great many of those streams have been taken up to irrigate the country between the Teton and the Missouri Rivers. Why did these men go into the enterprise if they thought it was necessary for their property to be exempt. There are other canals that have been taken up in that section of the country. I say there is ample capital to be embarked in this great enterprise in Montana. The country is full of cheap money. There is no nation on the face of the earth today, in my opinion, that is as well prepared to undertake this great enterprise as the people of the United States, and I do not believe that they would hesitate to take hold of this enterprise. There is one feature of this canal system, this irrigation system, which will commend itself to capitalists, and that is the permanency of that kind of investment You, Mr. President, may invest money in mines. Those mines after a while are mined out. The products of the mountains will finally yield up themselves, but money invested in these ditches becomes more valuable day by day and year by year, and if the investors in this kind of property do not receive the large income at first which they would like to, the future assures them of large returns for their capital. It is the most permanent kind of property that I know of in the Territory of Montana, and, if I had surplus money to invest, I would put it sooner in that class of property than any other I know of in Montana.

Mr. Luce, of Gallatin· The gentleman who has just taken his seat bases his remarks upon the fact that this constitutional convention has already adopted a provision that the water rentals shall be regulated by the County Commissioners of the several counties. Now, there at once, it seems to me, is objection to gentlemen, whether in this Territory or from New York or London, investing their money to any extent, because it is beyond their control as soon as they do it Now, you have done that already. There is a blow to the irrigation projects of this state, by saying that the money that might be invested here in canals for the distribution of water over this Territory shall be within the control of County Commissioners, and, on the other hand, is the offset, that there shall be no encouragement at all. Now, those canals that have been built were built without any such constitutional provision as that. Let me tell you that there is no provision in this constitution, nor can there be, restricting, for instance, the rates—the tariff rates—of the Northern Pacific Railroad

Company; or the passenger fares of the Northern Pacific Railroad Company. That is beyond the control of this constitution and it is beyond the control of the state because there is a charter granted by the United States and it is beyond our control. And so it is with all of these corporations, these great transportation companies, with these great common carriers There is no restriction upon their right to regulate rates; but upon this one great question that affects the people of the state of Montana I think more than any other one question, you start out with the proposition in the constitution that the money invested in these large canals is within the control of the County Commissioners or within the control of the regulation laws of Montana and not of the people that invest their money in them. Now, that is a singular spirit of inducement to capital to come from London or New York here and build your canals; but as a spirit of offset to that, I think that we should provide that these canals should pay taxes upon their income. Now, it seems to me, that the argument of the gentleman from Silver Bow was to the effect that they never would pay anything. He said they would never pay taxes at all; that if that was the case there would never be any net profit on their income; but if there ever is any great profit in any of these great monopolies that we have heard gentlemen talking about, then that profit is subject to taxation, and until there is a profit, I say that there is no encouragement. I want to say here that there is not one particle of difference between this proposition and the proposition that has already been introduced into this constitution for the taxation of mines. They stand exactly upon the same footing. Do you mean to say to me that the mining interests of this country are of more value than the agricultural interests? It has been well said that these mines will in time pan out, and only the recollection of those places will remain, whereas, on the other hand, if you reclaim a piece of land and get the water upon it, "it is a thing of beauty and joy forever"; it never peters out. Now, if any gentleman can point out the difference between this provision and that by which you propose to tax mines, I would like to have that distinction pointed out, for it is impossible for me to see it. It is not, as has been supposed by some gentlemen here, that this is for the exemption from taxation of those large ditches. They are all treated alike; it does not make any difference whether the ditch is taken out for the sale of water or not. It is for the distribution of water, for any useful purpose for which the water is put, and it protects all alike. It protects a half dozen farmers who combine to take out water and bring it upon their land and could protect one hundred farmers if necessary. Now, down in our country we have a corporation—a corporation of farmers—not capitalists, but farmers—who have taken out a large ditch and they found it necessary to become a corporation in order to manage their affairs; and I say they are entitled to encouragement. They have thousands of inches of water under their control in this section, and it is intended to treat all alike, to foster these ditches whether they are great or small. But the proposition for taking our ditches hereafter will be on a larger scale than ever before, because these small proprietors have done all they can. Now, the question is as to this large tract of land, which can only be reached by combinations, either of farmers or by others combining their forces in corporations,—it makes no difference. In order to reach this water, it will be necessary to have large canals that will be built at great expense, and there is no such thing as a corporation undertaking that work to become a monopoly, or squeezing the life out of the farmer, because there stands the law and the constitution and the Board of County Commissioners to see that no such thing is done.

Mr. Burleigh, of Custer: I expect to vote upon this question when it comes up, and, as is well known perhaps by this convention, I have opposed from the beginning strongly the putting of any provision into this constitution which savored of legislation, so far as I was able to judge. I have also advocated here an absolute system of irrigation which will enable us to develop the resources of our soil from an agricultural point of view, and it may look to some as though, while I look upon this amendment here as savoring very strongly of legislation, that I should vote, and I shall vote upon it, if compelled to meet the matter here. There are two bulls staring me in the face; one, the danger of legislating unduly in our constitution, and the other is of striking a death blow to the interest which I believe is absolutely essential to the development of this state and making it worth while for a man to live here. Now, I want to state a few facts which have come to my knowledge in this matter. There are in Custer County four gentlemen, some of whom were known in this country before they came here, who embarked in agriculture, and I never saw any better agriculturists in any country in my life. One of these men lives on the upper end of the Gallatin Bottom—John C. Gray, who was formerly sheriff of Gallatin County. The next is Mr. Higgins, who formerly lived in Missoula. The next is James Simpson, who went there many years ago, and the next is John somebody All four of those men stand as well in Custer County as any men in any other county in this Territory. They went there as practical agriculturists and every one of those men have told me that had it not been for their horses and their stock that they would be paupers today. They believed, from the beautiful character of the soil and the climate, that they could sow their seed in the ground and produce and increase, but the result has been that where they have raised a moderate crop once in three or four years and a monstrous crop once in six years, the balance of the time they have failed—utterly failed, in many instances—and the result has been that the increase has not been sufficient to keep them and their families alive. and they have grown poor with this system of agriculture Mr. Simpson, and perhaps Mr. Higgins, thought to remedy this evil two or three years ago, by sending east and getting machinery to bore artesian wells, for the purpose of irrigating the soil They failed in that and did not succeed in raising water enough from the bowels of the earth to irrigate any considerable amount of gravel. The result was a total failure, and unless there is some other system adopted, not only have we got to abandon agriculture, but we have to abandon stock raising, and we have got to leave the lower counties and go into some other part of the country to secure means of livlihood Now, in explaining myself in this way, I regard myself as having to take the choice of two evils, and while this measure does not suit me exactly—I mean the amendment which was offered yesterday by Judge Dixon and which has been considered here by the convention—I shall vote for it; and if that fails, I shall offer an amendment something like this: "All ditches, flumes, canals and other means used expressly for the purpose of irrigation may be exempted from taxation; provided. however, that the Legislative Assembly, shall have the power to regulate the rates for all water used in irrigating .purposes." Now, while I am unwilling to surrender this whole thing and subject the people here to the dangers which have been so eloquently and perhaps truthfully depicted by my friend from Cascade (Mr Collins), it will protect us against those evils, if they really exist, and certainly cannot be objectionable to those who want to turn this thing over to the Legislature to control, and with these remarks I shall cease to consume the time of the convention.

The Chair stated the question.

Mr. Myers, of Yellowstone, called for the ayes and nays.

Mr Collins, of Cascade I would like to say a few words. I would like to state again that in my opinion the basis of this proposition before us is wrong. That in my opinion the argument made upon this proposition by Mr. Dixon, Mr. Toole and Mr Knowles is upon a wrong hypothesis. Now, I claim that if you pass this proposition, that you will give a premium to parties who go into the ditch business exclusively for sale and that you will give no benefit whatever, directly or indirectly, to the farmers or to anyone else who comes into the business for the purpose of using water themselves. You give this premium, and it is a large premium. This is a great subsidy to the man who invests his money in it as a business enterprise, but it gives not one cent to the farmer who takes his little ditch upon his land, nor one copper to the dozen or twenty or fifty farmers who combine together to get it upon their lands and use it exclusively upon their lands Instead of that, you compel the farmer or the stockgrower to increase his taxes. Every inch of water that is brought out upon a farm adds to the value of it, and the assessor places that assessed value upon his list Every farmer that is on the line of a ditch, as was well said by the gentleman from Silver Bow (Mr. Stapleton), controlled by these corporations, adds to the value of his farm five-fold, ten-fold or it may be one hundred-fold, and the man who owns that ditch does not help pay one cent of the tax on that increase. The man who takes up that land and makes it valuable pays every cent. Now, that cannot be denied. It is a fact. You may levy taxes upon the man who, by the sweat of his brow, is trying to make a living, and you take taxes off of the man who sells the water that makes the land valuable, perpetually; not for a day nor for a year, but forever. Now, gentlemen are wrong in their argument when they state that this proposition is of equal benefit to all interests and that it bears equally upon all persons. It is not a fact, and if you will read this proposition that is here described you will see it.

Mr. Middleton, of Custer: I would like to ask you a question. Whether or not, "for the sale, rental, distribution or other beneficial use of the water" does not mean the individual water taken out by the individual farmer?

Mr. Collins, of Cascade: Certainly it must, but at the same time that ditch is not taxed—the net proceeds are not taxed, but the value of that ditch is placed on the value of their lands and assessed. If the land is only worth a dollar and a quarter at first, it might be worth $20 an acre when it is irrigated. The ditch may not be taxed and will not be taxed, but the land will be taxed at $20 an acre.

Mr. Myers, of Yellowstone: I would like to ask the gentleman a question. Where is a combination of farmers, 10, 20, 30, 40 or 50 or any other number—they take out valuable ditches and construct large reservoirs—if those parties would not be benefited by the law?

Mr. Maginnis, of Lewis & Clarke: Certainly, this combination of farmers would be benefited—benefited immensely, too. But my proposition is that they would be compelled to pay five-fold, ten-fold and perhaps twenty-fold more taxes than they would today and the men who invest the money in the ditch for the purpose of selling that water increases the value of the farm that is occupied under it and does not increase the revenue of the State one single dollar.

Mr. Bickford of Missoula: He does if he gets anything for the water—if he gets anything in return for his capital invested, will not the state get its proportionate share of that money?

Mr. Collins of Cascade: Certainly, if he gets anything, he is taxed, and the State gets its share of that.

Mr. Eaton of Park: Not in the case of a non-resident.

Mr. Collins of Cascade: Probably not in the case of a non-resident, as was argued yesterday, the net proceeds will be very seldom seen and the revenues from the net proceeds will be very seldom heard of. Now, this matter should not be put into our constitution because if it should happen to be a great proposition, as undoubtedly it is, and should happen to be that we are not moving in the right direction and in the interests of the people, there is no way or manner of changing it so far as great corporations and great ditches, that we are now building, or that will be built almost before this constitution is adopted, are concerned. It will be a perpetual contract with those parties, and it seems to me it is giving them a wonderful amount of power not only for the purpose of getting money, but over all the people in the country in which this property is situated. Now, another thing and I am done. Certainly corporations and persons now have the privilege of going out to the streams of this territory and taking them up—appropriating them; but if you do not put a premium upon this business of taking up water by corporations; there will be less of it. If you put a premium upon this matter the people will combine together and form corporations and go out into the highways and buy up all the water in Montana.

Mr. Cooper of Gallatin: Will the gentleman permit me. They will have to build a ditch. They cannot hold an appropriation of water twenty days.

Mr. Collins of Cascade: Certainly; and they will take out the water. There is a great deal of new country in our section. Now, I claim that if you allow a corporation to take this water out, that a bona fide settler who comes after him and wants to settle upon a piece of land cannot get an inch of water. He must buy it. Hundreds and thousands and tens of thousands of settlers below that stream cannot get enough water for domestic purposes unless they buy it.

Mr. Middleton of Custer: Does this proposition give a ditch company any water rights that they have not at the present time?

Mr. Collins of Cascade: It gives to every ditch company in Montana a big premium to go out and take up water. It gives them an immense subsidy. They have been doing this thing for twenty years in the counties of Montana without this subsidy; they have taken out big ditches in our section of country; they have taken up ditches in the county that the gentleman lives in; I say that without this subsidy they will continue to take up ditches and that the ditches will not be owned by immense corporations, but by comparatively small corporations and individuals. But if you give this big subsidy or premium amounting to $150,000, upon a ditch that is worth one half million of dollars; nearly $150,000 a year—you are voting away something which you are not here for the purpose of doing and something which you have not the power to do, and something that you should not do

Mr. Callaway of Madison: As an illustration of how this proposition might work, as the gentleman from Cascade has said that it encourages monopolists, I want to call attention to one condition of things in Beaverhead and Madison counties. Twenty-five years ago perhaps a large class of settlers were located on the lower end of Beaverhead river, they appropriated the waters of the river and have contiuned up to this year to use those waters. Two or three years ago some companies formed—some corporations—near the head of that river about a mile from Ryan Creek and they took out of the river about 30 miles above the mouth of the river three big canals; and it is a fact that when I came over here, leaving home I think on the 2nd day of July, that the Beaverhead river was absolutely as dry as the streets of this city for 15 miles above the mouth of that river. Now, by the operation of those corporations they have left all the people below without enough water for their stock or their homes. Gentlemen, I say the people below have no remedy. They have been discussing this whole proposition for months. They have raised money to go and consult lawyers. There are a large number of people there, and for one-half of the entire length of that valley, from which the water is taken out, they have no resources It is a proposition that has not been settled yet as to what remedy they may find. Now as the gentleman from Cascade has said, I am not one to put a premium upon stealth of that kind—upon combinations of capital, to rob the citizens. As usual where these combinations are made, the individual citizens and farmers have practically no remedy. Then I say why let the big fish eat up the little ones. And, Mr President, without taking up the time of this convention I want to say here now, that I am opposed to all exemptions of any property from taxation I believe that every man that holds a dollar's worth of taxable property that can be assessed—that the assessor can estimate the value of, should pay equally with other men. The system is wrong. The proposition is incorrect. It is breaking down the very fundamental principle of our government when you propose to make one man pay taxes and allow the other to go free; when one man owns property to say that he shall have a privilege that another man has not. The objection that I have is that when you create these corporations—when you give them the benefit of this system, you are treating them better and giving them more privilege than you do somebody else. Now, so far as the proposition is concerned in Section 3 as to laying down a rule for taxation of mines, I know it is a fact, Mr. President, and I believe every gentleman in this convention knows it as well as I do, that so far as net proceeds of mines in Montana are concerned, they are nothing compared with what the net proceeds of these ditch properties will be There is a further proposition there, and that is that the net proceeds of mines are only paid by the successful ones, who can afford to pay. But I want to lay down this proposition to the convention that the poor miner and the man who has faith in his business, derive some benefit from it. But, as an illustration of the general working of this system I want to say that a few months ago I was engaged in a law suit in Virginia City and a gentleman whom I knew dealt largely in mines was being cross-examined. The question was upon what the net proceeds of a certain mine were. He testified upon cross-examination upon the stand that he had made about $10,000. in net proceeds. I knew that man realized more than that and I told him so, and I asked him how he accounted for it. Why, I charge the balance for my salary as superintendent of my own mine, said he. That is the practical explanation of it, and when you put this proposition in, as to the net proceeds of these ditches and canals, there will be very little ever gotten out of it. There is no provision in this article which says that the salaries of officers shall not be accounted for and the whole thing, so far as that proposition is concerned, is simply null and void

Mr. Hartman of Gallatin: I should like to ask at this time, whether a substitute is in order?

The President: Yes.

Mr. Hartman of Gallatin: I desire to offer the following as a substitute to Section 4

The President: The gentleman from Gallatin offers as substitute to the section.

The Clerk read as follows: "Taxation. Section 41. The Legislative Assembly shall be and it is empowered to provide the manner of assessment and prescribe rules for the determination of values for taxation of all property except as in this constitution otherwise provided."

Mr. Hartman, of Gallatin: I move the adoption of the substitute

The motion was seconded.

Mr. Callaway. I would like to ask as a point of order if when a motion is pending for an indefinite postponement, if an amendment is in order?

The President: The motion to amend precedes the motion to indefinitely postpone.

Mr. Collins, of Cascade: I would ask a favor: that the Chair reconsider its decision. The motion to postpone is one of the very highest consideration.

The President: I would refer the gentleman to our own rules which govern this matter. "When a question is under debate no motion shall be received except first to adjourn, second to lay on the table, third, for the previous question, fourth, to postpone to a certain day, fifth to commit to a standing committee, sixth, to select a committee, seventh, to amend, eighth, to postpone indefinitely; and these several motions shall have precedence in the order in which they stand arranged." The motion to amend takes precedence to indefinitely postpone, and the motion to indefinitely postpone is the lowest in the order of motions. The question is on the motion to adopt a substitute for the gentleman from Gallatin.

Mr. Cooper, of Gallatin: I hope that substitute will be voted down. I will not say any more.

Mr. Collins of Cascade: I call for the reading of the substitute.

The Clerk read the same.

Mr. Collins of Cascade: That I think will be very satisfactory.

Mr. Myers, of Yellowstone: I think that ground is covered by Section 1 of Proposition 27. "But the necessary revenue for the support and maintenance of the state shall be provided by the Legislative Assembly." I think that covers the ground.

Mr. Callaway of Madison: I move to lay the amendment on the table.

The motion was seconded.

Mr. Cooper, of Gallatin: I hope that will not prevail. That you carry the original motion with it.

Mr President: The question is upon the motion of the gentleman to lay upon the table.

Mr. Collins of Cascade: I rise to a preliminary inquiry. If the motion to lay this amendment on the table prevails, will it carry the whole matter with it?

The President: It carries the original motion with it.

The ayes and nays were called for.

Mr. Middleton of Custer: I understand the ruling of the Chair to be that if this substitute was laid upon the table that it carries the original proposition with it.

Mr J K. Toole of Lewis & Clarke: I desire to crave a preliminary inquiry. I did not hear what was said. Is this the amendment offered by Mr. Hartman or the amendment offered by Mr Dixon?

The President: The amendment offered by Mr. Hartman of Gallatin.

Mr J. K. Toole of Lewis & Clarke: But if that motion prevails it carries the proposition with it.

The President: If there be no objection to the ayes and nays, the same will be entered upon the minutes.

The Clerk read the roll.

The vote stood as follows:

Ayes: Aiken, Breen. Browne, Buford, Burns, A. F.; Burns, A J.; Callaway, Collins. Craven, Dyer, Eaton, Fields, Gibson, Gillette, Graves, Hammond, Hartman, Haskell, Hershfield, Hickman, Hogan, Joy, Kennedy, Knippenberg, Maginnis, Mayger, Parberry, Reek, Rotwitt, Sargent, Stapleton, Warren, Watson, Witter, Mr. President—35.

Nays: Bickford, Bullard, Burleigh, Burns, E.; Caldwell, Carpenter, Cauby, Chessman, Conrad, Cooper, Courtney, Dixon, Durfee, Gaylord, Goddard, Hatch, Hobson, Joyes, Kanouse, Knowles, Kohrs, Loud, Luce, Marrion, Marshall. McAdow, Middleton, Mitchell, Muth, Myers, Ramsdell, Robinson, Schmidt, Toole, Jos. K.; Toole, J. R.; Whitehill, Winston—37.

Absent: Brazleton, Rickards, Webster—3.

The Chair announced the vote and declared the motion to lay on the table lost. (Applause.)

The President: The question now is upon the adoption of the substitute of the gentleman from Gallatin.

Mr. Collins of Cascade. I offer an amendment.

The President. The gentleman from Cascade offers an amendment.

The Clerk reads as follows: At the end of Section 4, add "Provided that the land which is irrigated by such ditch shall also be subject to taxation on its net proceeds as may be provided by law."

Mr Middleton of Custer I rise to a point of order. There is an amendment to the proposition under consideration. Now, this amendment is not an amendment to that amendment Consequently it is an amendment to the original proposition and is certainly not in order, it not being an amendment to the amendment offered by the gentleman from Gallatin.

The President The amendment of the gentleman from Gallatin is a substitute.

Mr. Collins of Cascade. I withdraw my amendment until the proposition of the gentleman from Gallatin is voted upon.

Mr. J. K. Toole of Lewis & Clarke· I move the previous question on the section and all pending amendments.

Mr Collins of Cascade: I believe I have the floor.

The President. The gentleman from Cascade has the floor.

Mr. Collins of Cascade: I only withdrew my amendment for the purpose of allowing the action of the amendment of the gentleman from Gallatin If there is a disposition here to gag the convention then certainly I will not withdraw the amendment, but will insist upon its being acted upon, and after that we can act upon he amendment of the gentleman from Gallatin. But it seems to me that this proposition is before the convention and certainly no one has tried to amend it or perfect it. The proposition all day has been to indefinitely postpone. There has not been a single effort made to perfect this amendment, and I will leave it to the conscience of any man if there is not room to perfect it. It is the right of any member of this convention to try to perfect any section and it is a right that should not be infringed upon even by the members of the convention doing something. I have taken up as little of the time of this convention as many of the members of the floor and I have the prerogative and the right to offer amendments to this matter and I suppose to do it, and furthermore I think it is very little and very small on the part of any members of this convention to try to cut off that right that I have. If this thing is carried Mr. President, I am perfectly satisfied, but I want it carried fairly and we want to amend it before it goes into our constitution. I offer those amendments in perfect fairness and in perfect sincerity.

The President: There has been a question raised as the precedence of these motions. The Chair will state that in Jefferson's Manual, page 158 and a copy of which the Chair holds in his hands, it reads. "In like manner, if it is proposed to amend by striking out a paragraph the friends of the paragraph are first to make it as perfect as they can by amendments before the question is put to strike it out." That is the rule that the Chair has been acting under. The Chair desires to do only what is fair, but it requires that the rules be observed

The Clerk read the amendment of the gentleman from Cascade (Mr. Collins) for the information of the convention.

Mr. Parberry of Meagher: I know we are getting tired of so much water here, but I cannot see why it is not as fair for one as it is for the other. If the corporations shall have the right to own the water—the exclusive right when they have taken all out of the stream, to the water and only pay taxes upon the net proceeds of their property, why in the name of justice cannot a man who is trying to make a living by the sweat of his brow and who puts in his whole year's hard labor and pays taxes upon that whether he makes a dollar or not—why not let him pay only on the net proceeds? I do not see why if a man has a million dollars he should not pay his full pro rata of taxes and the other man who has five hundred dollars and has worked hard all the year round and has not made a dollar why he should contribute to the man who has the control of his property. I am in favor of exempting one if you exempt the other.

Mr. J. K. Toole of Lewis & Clarke: Now, that is just; that is proper; it seems to me a fair illustration of the manner in which this thing has been considered all along. The gentleman asks if a corporation owning a million dollars is permitted to pay taxes only on the net proceeds of the water, what is the reason that man who produces something on the land should not have the same privilege. Now, what Mr. Collins proposes to do by his amendment is to say that he shall pay on the net proceeds, but he does not go further and say that the proposition is—that the Board of County Commissioners shall have the right to regulate the prices of what is raised on this farm. If he does, then he subjects himself to the same restrictions and limitations that are sought to be put on the water, and that is another different matter. It is not similar in any respect.

Mr. Schmidt of Silver Bow sent up an amendment.

The President: The question now is upon the question of the amendment offered by the gentleman from Cascade.

Mr. Schmidt of Silver Bow: I desire to have my amendment read for information.

The President: The gentleman from Silver Bow offers an amendment that is out of order at present but will be considered in due time. It will be read by the Clerk for information.

The Clerk read as follows: "Strike out in line 2 of section 4, the words 'or any other benficial use of water' and insert the words, 'all water for irrigating purposes' so as to read, 'for the sale, rental and distribution of water for irrigating purposes'."

The President: The question now is upon the amendment of the gentleman from Cascade.

The Chair put the question on the amendment of the gentleman from Cascade, and a vote being taken, the same was declared lost.

The President: The question now is upon the amendment offered by the gentleman from Silver Bow (Mr. Schmidt) to the original section.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Schmidt) and a vote being taken the same was declared lost.

Mr. Mayger, of Lewis & Clarke: I have an amendment which I desire to offer.

The President: The gentleman from Lewis & Clarke (Mr. Mayger) offers the following amendment which the Clerk will read.

The Clerk read as follows: "Amend Section 4 by striking out of line 2, the word 'shall' and insert the word, 'may.'"

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Mayger) and a vote being taken the same was declared lost.

The President: The question now is on the substitute offered by the gentleman from Gallatin (Mr. Hartman.)

The Clerk read the said substitute as follows: Section 4. The Legislative Assembly shall be and it is empowered to provide a manner of assessment and prescribe rules for the determination of values for the taxation of property except in this constitution otherwise provided.

Mr. Collins of Cascade: I call for the ayes and nays on the substitute of the gentleman.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Breen, Brown, Buford, Bullard, Burns A F., Burns A. J., Burns Edward, Callaway, Collins, Courtney, Eaton, Fields, Gibson, Gillette, Hartman, Hickman, Hogan, Joy, Kennedy, Maginnis, Mayger, Parberry, Reek, Robinson, Rotwitt, Sargent, Warren, Watson, Witter, Mr. President—30.

Nays: Aiken, Bickford, Burleigh, Caldwell, Carpenter, Cauby, Chessman, Conrad, Cooper, Craven, Dixon, Durfee, Dyer, Gaylord, Goddard, Graves, Hammond, Haskell, Hatch, Hershfield, Hobson, Joyes, Kanouse, Knippenberg, Knowles, Kohrs, Loud, Luce, Marrion, Marshall, McAdow, Middleton, Mitchell, Muth, Myers, Ramsdell, Schmidt, Stapleton, Toole, J. R.; Toole, Jos. K.; Whitehill, Winston—42.

Absent: Brazleton, Rickards, Webster—3.

The Chair announced the vote and declared the substitute lost.

Mr. Hogan, of Silver Bow: This is certainly a subject that does not materially concern me or the district which I represent; therefore, I would rather leave it to the members that it does concern directly. But it seems to me that there are some objectionable features about it. Now, I notice that it does not say that the water that is used for irrigation purposes shall be excluded from taxation except on the profits. Now, I venture to say that the whole Missouri River might be turned into an irrigating ditch, and I venture to say that there never would be any net proceeds to tax. On that account I shall oppose the matter.

The President: The question is upon the motion to indefinitely postpone.

The ayes and nays were called for.

The President: If there be no objection, the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Breen, Browne, Buford, Burns, A. F., Burns, A. J., Burns, Edward; Callaway, Collins, Courtney, Craven, Dyer, Eaton, Fields, Gibson, Gillette, Graves, Hammond, Hartman, Haskell, Hickman, Hogan, Joy, Kennedy, Knippenberg, Maginnis, Mayger, Parberry, Reek, Robinson, Rotwitt, Sargent, Schmidt, Stapleton, Warren, Watson, Witter, Mr. President—38.

Nays: Bickford, Bullard, Burleigh, Cardwell, Carpenter, Cauby, Chessman, Conrad, Cooper, Dixon, Durfee, Gaylord, Goddard, Hatch, Hershfield, Hobson, Joyes, Kanouse, Knowles, Kohrs, Loud, Luce, Marrion, Marshall, McAdow, Middleton, Mitchell, Muth, Myers, Ramsdell, Toole, J. K.; Toole, J. R., Whitehill, Winston—34

Absent: Brazleton, Rickards, Webster—3.

The Chair announced the vote and declared the motion of the gentleman from Cascade (Mr. Collins) to indefinitely postpone, carried. (Applause)

Mr Callaway, of Madison: I move that the motion by which the section is indefinitely postponed be reconsidered, and that the reconsideration be laid on the table.

The motion was seconded

Mr. Bickford, of Missoula: The gentleman voted aye on the proposition and he cannot make a motion to reconsider.

The President: It is moved and seconded that the vote by which Section 4 has been indefinitely postponed be reconsidered and that the reconsideration be laid on the table.

The President. There being a call for the ayes and nays, if there be no objeection they will be entered on the journal.

The Clerk called the roll

The vote stood as follows:

Ayes: Breen, Browne, Buford, Burns, A. F.; Burns, A. J.; Burns, Edward; Callaway, Collins, Courtney, Craven, Dyer, Eaton, Fields, Gibson, Gillette, Graves, Hartman, Hickman, Hogan, Joy, Kennedy, Knippenberg, Maginnis, Mayger, Parberry, Reek, Robinson, Rotwitt, Sargent, Stapleton, Warren, Watson, Witter, Mr. President—34.

Nays. Aiken, Bickford, Bullard, Burleigh, Cardwell, Carpenter, Cauby, Chessman, Conrad, Cooper, Dixon, Durfee, Gaylord, Goddard, Hammond, Haskell, Hatch, Hershfield, Hobson, Joyes, Kanouse, Knowles, Kohrs, Loud, Luce, Marrion, Marshall, McAdow, Middleton, Mitchell, Muth, Myers, Ramsdell, Schmidt, Toole, Jos. K.; Toole, J R., Whitehill, Winston—38.

Absent: Brazleton, Rickards, Webster—3

The Chair announced the vote and declared that the motion to lay on the table was lost. (Applause)

Mr. Burleigh, of Custer: Is not my substitute to this section in order?

The President: The Chair is under the impression that all portions of Proposition 27 were passed upon finally except Seection 4. That section is indefinitely postponed, hence the Chair is of the opinion that no motion is now germane to this subject

Mr. Maginnis of Lewis & Clarke: I move that we go into the Committee of the Whole for the consideration of Miscellaneous Schedule.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke and a vote being taken the same was declared carried.

The President called Mr. J R. Toole, of Deer Lodge, to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. J. R. Toole, of Deer Lodge, in the Chair.

The Committee was called to order.

The Chairman: Is the Clerk of the Committee of the Whole present? It is desired that the Sergeant at Arms request the Clerk of the Committee of the Whole to attend if he is not present.

Mr. Hickman, of Madison: I move that this Committee of the Whole recommend that the Clerk be dismissed for dereliction of duty, and I make that as a motion.

The motion was seconded.

The Chair stated the motion.

Mr. Haskell, of Dawson: I understand that the gentleman who usually performs the duties of the Clerk of the Committee of the Whole was requested a few minutes ago to act in the place of a Clerk who was sick. I ask that the convention will take no such step as that now proposed.

Mr. Collins, of Cascade: If that is the state of facts, Mr. Chairman, we ought not to be rash in acting upon this matter

Mr. Hickman, of Madison: I will state that this Clerk has not been attending to his duty all through this session, and I want to see the clerks brought up to the mark, and if they do not attend to business, let us have them dismissed.

The Chair put the question on the said motion of the gentleman from Madison, and a vote being taken, the same was declared lost.

The Chairman: The question under consideration when the committee rose was Proposition 28, Section No. 10, on the motion made by the gentleman from Gallatin to strike out Section No. 10.

Mr. Collins, of Cascade, called for the reading of the section.

The section was read.

The Chairman: The motion is to strike out Section 10

The Chair put the question on the motion of the gentleman from Gallatin to strike out Section 10, and a vote being taken, the same was declared carried by a vote of 34 in the affirmative to 28 in the negative.

The Chairman: Are there any further amendments to Section 10?

Mr. J. K. Toole, of Lewis & Clarke, sent up an amendment.

Mr. Collins, of Cascade: Do I understand Section 10 as stricken out?

The Chairman: Yes sir. The gentleman from Lewis & Clarke offers in lieu of the section stricken out the following: "The Legislative Assembly shall pass laws prohibiting the granting of free passes or the sale of tickets at a discount by any railroad or transportation company to any state, county, district or municipal officer."

Mr. Courtney of Silver Bow: I move the adoption of the section.

The motion was seconded.

The Chair stated the motion.

Mr. Luce, of Gallatin: I have a substitute to offer.

The Chairman: The following is offered as an amendment: "The Legislative Assembly shall by proper legislation prohibit any executive legislator or judiciary officer of the state or of any county, or municipal officer, from receiving directly or indirectly from any railroad company or other corporation or common carrier in this state, or use any free pass or free ticket or pass or ticket at a discount and shall impose adequate penalties for any violation of such legislation.

Mr. Luce of Gallatin: I move the adoption of the substitute

Mr. Middleton of Custer: I rise to a point of order, is not this substantially the same as the section that has been stricken out.

Mr. Luce of Gallatin: I think the gentleman is entirely mistaken The section was the more objectionable because it provided that any railroad or other transportation company, agent, officer or employe thereof should grant free passes or tickets that might be in conflict with the act granting the charter to the Northern Pacific company which was granted by the Congress of the United States. If you will read this amendment carefully, it provides that no judiciary, legislator or officer shall receive or use such pass.

Mr. Marshall of Missoula: I think there is more substantial differences between the two propositions, than the one stated. One says positively. without leaving it to the Legislature, that the road shall not grant and officers shall not receive. That is to say that the Legislature shall pass laws. That is the obvious objection which has been made to a great many propositions that this convention is legislating. We do not propose to do that but propose to direct the Legislature how they shall legislate.

The Chairman: The question is upon the question of the adoption of the amendment offered by the gentleman from Gallatin.

Mr Fields of Park: I offer the following amendment to the amendment.

The Chairman: There are two amendments already.

Mr. Fields of Park: One is a substitute.

The Chairman: The amendment before the house now is the substitute offered by the gentleman from Gallatin.

The Chair put the question on the substitute of the gentleman from Gallatin (Mr. Luce) and a division being called for the same was declared lost by a vote of 25 in the affirmative to 31 in the negative.

The Chairman: The question now before the house is upon the adoption of the substitute offered by the gentleman from Lewis & Carke as follows: "The Legislative Assembly shall pass laws prohibiting the granting of free passes or the sale of tickets at a discount by any railroad or transportation company to any state, county, district or municipal officer.

Mr. Luce of Gallatin: I suppose the mover means within this state. That is a general sweeping prohibition that would operate in any other state as well as the State of Montana, if the gentleman will amend it so as to make it read, "Shall not receive any pass or ticket from any corporation within this state." it will be better.

Mr. J. K. Toole of Lewis & Clarke: That is what is designed. It might be amended. I accept the amendment.

The Chairman: The gentleman accepts the amendment.

Mr. Myers of Yellowstone: I sent up an amendment some time ago and I would like to have it read.

The Chairman: The following amendment is offered, "The Legislative Assembly shall pass laws prohibiting the granting of free passes or the sale of tickets at a discount by any railroad or other transportation company, to state, county, district or municipal officers.

Mr. Myers of Yellowstone: Now I move to make use of the amendment that I offered there, commencing at the word "except" and I offer it as an amendment to the section offered by the gentleman from Lewis & Clarke. They are purely executive officers and their actions cannot be influenced by passes.

The motion was seconded.

The Chairman: The section would then read, "Except sheriffs, deputy sheriffs and stock inspectors. ' '

Mr. J. K Toole of Lewis & Clarke: I accept that amendment.

The Chairman: The question before the house is upon the section as amended.

The amendment is accepted by the gentleman from Lewis & Clarke.

Mr. Hickman of Madison: I move that the word "judiciary" be added to the list of officers.

The motion was seconded.

Mr. Burleigh of Custer: I move to add to those officers that have been excepted, "Preachers of the gospel, preachers, sabbath school teachers and members of the Salvation Army."

Mr Hogan of Silver Bow: I move as an amendment to that that the member from Custer be excepted.

The Chairman: The question is on the amendment of the gentleman from Lewis & Clarke

Mr. Hogan of Silver Bow: Is this an amendment?

The Chairman: This is the section offered by the gentleman from Lewis & Clarke, Mr. Toole

The Clerk read the section as amended.

The Legislative Assembly shall pass laws prohibiting the granting of free passes or the sale of tickets at a discount by any railroad or other transportation company to any state, county, district or municipal officers, excepting sheriffs, deputy sheriffs, constables and stock inspectors."

Mr Luce of Gallatin. Mr Chairman, I move an amendment by inserting the words, "within this state."

Mr. J. K Toole of Lewis & Clarke: I do not think that ought to be included. My idea in drawing that was that I thought perhaps there might be some question in reference to the Northern Pacific Railroad for instance and the section would make a penalty against that road and would leave it to the Legislature to provide in such way as they can legally provide for the enforcement of the penalty whether incorporated in the territory or not.

The Chairman: The question before the house is upon the adoption of this section as read.

The Chair put the question of the adoption of the said section and a division being called for, the same was declared carried by a vote of 32 in the affirmative to 26 in the negative.

Mr. Joy of Park: I offer an amendment.

The Chairman: The gentleman from Park offers the following as an addition to the section already adopted, "provided that this section shall not apply to persons who hold or were entitled to passes before their election by reason of their employment by any railroad company."

The motion was seconded.

Mr. Joy of Park: I want to say in relation to that amendment that there are now officers, one in particular in our county—the County Superintendent of Schools, who has free transportation over the line of road that runs through that county and had it some time before she was elected. Under this provision here that lady would be debarred from holding that office or from holding that transportation, one or the other. For another reason. there are several thousand people in this territory who are connected with the railroads, employed by them day by day, and they are entitled undoubtedly to some representation in this body and it would not be out of order or unusual for some of those persons if they happened to be elected to the Legislature or some office, and I say in that event, some exception ought to be made. I offer this amendment for this purpose.

Mr. Clarke of Silver Bow: Mr. Chairman, I understand that the section adopted provided that future legislatures may provide for the regulation of this business.

Mr. Burleigh of Custer: No, it provides that they shall.

Mr. Clarke of Silver Bow: Well, let the future legislatures provide for this.

The Chair stated the question.

Mr. Middleton of Custer: It seems to me that that amendment as well as the amendments that have preceded it show the utter absurdity of making any provision in this constitution touching this matter. If the constitution itself is silent upon the question there can be no doubt or question but that it is entirely in the power of the first legislature that meets to enact just such laws as it may see fit in reference to prohibiting public officers from in any way accepting free transportation from any railroad company, or railroad companies from granting them; and it seems to me that these are the very best reasons why the section should not be adopted, but if it is desired to put anything in the constitution that amendment certainly should not be adopted. But strike out the word "shall" in the proposition as it is adopted and insert the word "may" and you have simply said to the legislature that you may do it.

Mr. Clarke of Silver Bow: Also in regard to the proposed change I beg to say that I understand when this matter was under consideration this morning that the gentleman from Custer stated that that subject had been before one or two legislatures in this territory, but that they had taken no action upon it. Now, if you allow them to strike out the word "shall" and substitute "may" it will be at the pleasure of the legislature only and you may rest assured it will not be done.

Mr. Buford of Madison: I move to amend that amendment by inserting after the word railroad, the words "or transportation."

The motion was seconded.

The Chair stated the motion.

Mr. Middleton of Custer: If I may be permitted a word in reply to the gentleman from Silver Bow (Mr. Clark) I think it is true that this matter has come before a legislature once to my knowledge and perhaps once or twice before that, and action was had upon it. A bill was introduced and died there. Now, I do not understand and do not believe that the gentleman contends that in this convention may be found all the wisdom that ever was or ever will be in Montana, and I believe it is fair to say that the people in electing legislators will perhaps select with more care the persons that they send her to make laws than they did in many instances in sending men here to make this constitution. And it seems to me that it is a matter purely of legislation; it is a matter to be left to the legislature to say whether they will enact those laws or not; but to say to them that you shall enact such and such laws indicates that this convention has not sufficient confidence in future legislatures in Montana to enact such laws as the people may demand and desire. A man comes here or perhaps to Anaconda where the capitol is going to be, as a member of the legislature. A bill of that character is proposed. He puts himself upon record. He goes back to his constitutents and is accountable just as much as he is here. I do not believe that this is a matter that should be a constitutional provision at all. It seems to me there is no reason for it and if the convention desires to say anything about it, it should be enough to say that the legislature may do so, without compelling the legislature to enact laws of that character, and particularly of the character of the proposed amendment.

The Chair put the question on the motion of the gentleman from Madison (Mr. Buford) and a vote being taken the same was declared lost

The Chair: The question now is upon the amendment as presented by the gentleman from Park.

The Chair put the question on the amendment offered by the gentleman from Park and a vote being taken the same was declared lost.

There being no further amendment to section 10, the Clerk read Section 11, as follows: "Any citizen of this state, who shall, after the adoption of this constitution, fight a duel with deadly weapons, or send or accept a challenge for that purpose, or be aider or abettor in fighting a duel, either in this state or out of it, shall be deprived of the right of holding any office of honor or profit in this state and be otherwise punished as shall be prescribed by law."

Mr. Rotwitt of Meagher: I move to strike out the section.

The motion was seconded.

The Chair put the question of the gentleman from Magher (Mr. Rotwitt) and a vote being taken same was declared carried.

There being no further amendments to Section 11, the Clerk read Section 12 as follows: "All property both real and personal, of the wife, owned or claimed by her before marriage and that acquired by her after marriage by gift, devise, descent or otherwise, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property as that held in common with her husband and providing for the registration of the wife's separate property."

Mr. Craven of Lewis & Clarke: I move to strike out the word "more" on line 3.

The motion was seconded.

Mr. Goddard of Yellowstone: I move as an amendment to that, that the entire section be stricken out.

The motion was seconded.

The Chair stated the motion of the gentleman from Yellowstone (Mr. Goddard.)

Mr. Carpenter of Lewis & Clarke: This is as clearly legislation as anything I have seen. The first clause of the section has been on the statute book for twenty years: the second clause is merely advisory and if it does anything it will be to limit and curtail the rights of women. I am in favor of their having equal rights with men in every respect in regard to the transaction of business and in all the convenience of prosperity and the accumulation of property. I am opposed to hampering them in any way and I think this can be safely left to the legislature for their benefit, especially considering the growing feeling in their favor at the present time. Certainly I am in favor of their having all the rights of property and the opportunities for business that men have and of going still further for their protection if necessary. (Applause)

The Chairman: The question is on the motion to strike out

Mr. Craven of Lewis & Clarke: The motion to amend the section has preference over the motion to strike out.

The Chairman: The point of order was well taken. The question is upon the motion to amend by striking out the word "more" in line 3.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Craven) and a vote being taken the same was declared carried.

The Chairman: The motion now is to strike out Section 12.

The Chair put the question on the same motion of the gentleman from Yellowstone (Mr. Goddard) and a vote being taken the same was declared carried.

The Chairman: In connection with this proposition 28 there was a resolution introduced by Mr. Myers of Yellowstone to be considered in connection with it, which reads as follows: "Resolved, that no person holding any office of profit under the United States and commissioned by the president shall during his continuance of such office be eligible to be appointed to hold or exercise any office of profit under this state."

Mr. Myers of Yellowstone. I move that that be adopted and be called Section 11 and that the other sections be numbered to correspond.

The motion was seconded.

Mr. Marshall of Missoula: I move to strike out the words, "commissioned by the President." There are officers of the United States who are not commissioned by the President and who hold important offices—the fourth class postmasters for instance.

The motion was seconded.

The Chairman: It is moved and seconded that the resolution as read be incorporated in this article and numbered Section 11. To that motion the gentleman from Meagher offers the amendment to strike out the words, "commissioned by the President."

Mr. Hershfield of Lewis & Clarke: The committee had that matter under consideration and if that was acted upon in accordance with the suggestion of the gentleman from Meagher it would prohibit small postmasters all through the country from holding any other office and prohibit them in very many small places from obtaining postmasters at all, and that is one of the reasons I presume the mover of this resolution intended to cover.

Mr. Maginnis of Lewis & Clarke: I would say to my friend from Missoula that every office, the receipts of which are over a certain amount—one thousand dollars, I think—is commissioned by the President.

Mr. Hershfield of Lewis & Clarke: Those small postmasters that receive four or five hundred dollars a year could not depend upon their salaries for a living. If the resolution of the gentleman from Custer was entertained it would be difficult in very many places to obtain postmasters at all.

Mr. Marshall of Missoula. I do not insist upon the amendment in this matter, gentlemen,—I will withdraw it.

The Clerk read the section as proposed by the gentleman from Yellowstone (Mr. Myers) for the information of the committee

Mr. Callaway of Madison: The only criticism I would make about that is that it would prohibit officers commissioned by the President from holding military offices in this state; in other words, from performing military duties. Now, we have some most excellent gentlemen in the territory of Montana not commissioned by the President, who hold posts in the militia.

Mr. Middleton of Custer: In connection with that resolution it seems to me that it would in many instances work hardship and great inconvenience. Now, I know the matter was considered last winter at the time the registration law was under consideration in the legislature as to the appointment of registration agents and it was found that it would be convenient in many places—most convenient for the people, and could perhaps better be performed by postmasters where it was convenient to have a registration agent at a point where there was a postoffice.

Mr. Myers of Yellowstone: I would say that it would not interfere with them. It would have no affect upon those postmasters. It is only those commissioned by the President and there are only certain ones commissioned. It would not affect that at all.

Mr. Mayger of Lewis & Clarke: I may simply make a statement as to the postmaster of Marysville. He is a commissioned officer under the President. He is now holding the office of Clerk of the School Board of Trustees and I think it is an office created by the laws of the territory of Montana and it would be in violation of this provision if it were passed for him to hold that office any longer.

The Chair put the question on the adoption of the section as proposed by the gentleman from Yellowstone (Mr. Myers) and a vote being taken the same was declared lost.

The Chairman: The Clerk will read Section 13 of the printed bill.

The Clerk read Section 13, as follows: "The Legislative Assembly may at any time, by a vote of two-thirds of the members elected to each house, recommend to the electors of the state, to vote at the next general election for or against a provision to revise, alter or amend this constitution; and if a majority of those voting on the question shall declare in favor of such convention, the Legislative Assembly shall at its next session provide for the calling thereof. The number of members of the convention shall be the same as that of the house of representatives, and they shall be elected in the same manner, at the same places, and in the same districts. The Legislative Assembly shall in the act, calling the convention designate the day, hour, and place of its meeing, fix the day of its members and officers, and provide for the payment of the same together with the necessary expenses of the convention. Before proceeding, the members shall take an oath to support the constitution of the United States and of the State of Montana, and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as members of the senate and vacancies occuring shall be filled in the manner provided for filling vacancies in the Legislative Assembly. Said convention shall meet within three months after such election and prepare such revisions, alterations or amendments to the constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection at an election, not less than two, nor more than six months after the adjournment of the convention; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration, or amendment shall take effect.

Mr Myers of Yellowstone: I desire in the first line to strike out the word "two thirds" and insert "majority"

The motion was seconded.

The Chair put the question on the motion of the gentleman from Yellowstone (Mr. Myers) and a vote being taken the same was declared lost.

The Chairman: The following amendment is offered by Mr. Rotwitt of Meagher; amend by striking out on line 3 of section 13 the words "those voting on the question" and insert in lieu thereof, "All members" commencing on line 3 and extending into line 4.

The motion was seconded.

Mr. Carpenter of Lewis & Clarke: I think the gentleman misapprehends the meaning of this. I think if he will read closely he will see that the section refers to the electors instead of the members of the Legislature.

Mr. Rotwitt of Meagher: I withdraw the motion.

Mr. Myers of Lewis & Clarke sent up an amendment.

The Chairman: The gentleman from Lewis & Clarke offers the following amendment which is in the nature of a substitute. Section 13. "The Legislative Assembly may at any time by a two-thirds vote of the members elected to each house recommend to the electors of the state to vote at the next general election for or against a convention to revise, alter or amend this constitution as may be provided by law."

The motion was seconded.

Mr. Mayger of Lewis & Clarke I think, Mr. Chairman that the legislature should be allowed the privilege of stating what this convention should do.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Mayger) and a vote being taken, the same was declared lost.

There being no further amendments to Section 13, the Clerk read Section 14, as follows "Any amendments to this constitution may be proposed in either house of the Legislaive Assembly; and if the same shall be voted for by two-thirds of the members elected to each house such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the Secretary of State shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election, for members to the Legislative Assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection, and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately; Provided, however, that not more than three amendments to this constitution shall be submitted at the same election."

Mr. Bickford, of Missoula: In line two of the section, I ask to strike out the words "two-thirds" and insert in lieu thereof the word "majority."

The motion was seconded.

The Chair stated the motion.

Mr. Burleigh, of Custer: I hope this motion will not prevail. It is a departure, it seems to me, from all precedent, and, in addition to that, if it is made so easy to amend this constitution upon every occasion when there is a majority of heads or of tails down, the proposition will be submitted to be amended. I do not think the organic law of the land should be so constituted. I think the provision is a wise one. It is the same or virtually the same provision as in the constitution of the United States, and I think we can do no better than to adopt the matter as it now stands. The members of the former convention thought the same thing and put that provision in.

Mr. Bickford, of Missoula: My object in offering the amendment was simply that a majority might rule in a matter of that kind. I submit; however, the proposition is entirely in harmony with all our institutions, that a majority should rule. I believe that if we found it necessary to submit the amendment to the constitution, and if a majority of the houses of the Legislature deemed it fit that such an amendment should be offered, I believe it is right that the people of this Territory should have the right to vote upon it; and this is particularly true when you take into consideration the fact that the submission of an amendment to the constitution would incur no particular expense to the State, because it would be submitted at some regular election; it would simply come up when some other election would be before the people.

The Chair put the question on the motion of the gentleman from Missoula, and a vote being taken the same was declared lost.

Mr. Burleigh, of Custer: I move that the committee do now rise.

The motion was seconded.

Mr. Craven, of Lewis & Clarke: I should like the unanimous consent to return to Section 1. It occurs to me that this blank form in Section 1 should be filled, and I have prepared an amendment which I should like to have read.

The Chairman: The following amendment is offered to Section 1: By inserting in parentheses, the following words, "the name of his office being herein inserted", after the word "of" on line 5.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Craven), and a vote being taken the same was declared carried.

Mr. Knowles, of Silver Bow: In striking out here, I believe that Section 8 ought to be stricken out. I move that that whole section be stricken out.

The motion was seconded.

The Chair stated the motion.

Mr. Knowles, of Silver Bow: The reason for that is this: that the law provides that all officers elected shall take their offices, and there is one officer, and there may be others—I do not know—but there is one officer at least, the Treasurer. that holds on until March under the law. and that is because of the settlement of the fiscal year. The beginning of the fiscal year, under the laws of the Territory, has beeen made, I think, the first Monday in March, and that is the time the Treasurer makes his fiscal settlements with the County Commissioners of the county. and I do not think he ought to be turned out of office before he makes his final settlement.

Mr. Bickford of Missoula: Mr. Chairman, there is one other set of officers that would be affected by this and that is the school district officers. The election of these officers is in May of each year and they are expected to file their bond and take possession of their office within 20 days of the time when they are elected to fill such office.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Knowles) to strike out Section 8, and a division being called for, the same was declared carried by a vote of 28 in the affirmative to 19 in the negative.

Mr. Bullard, of Jefferson: I move that the committee do now rise.

The motion was seconded.

Mr. Hickman, of Madison: I move that when the committee rise they report the proposition back to the convention with the recommendation that as amended it do pass.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Madison, Mr. Hickman, and a vote being taken, the same was declared carried.

The Chairman· The question now is upon the motion of the gentleman from Jefferson, Mr Bullard, that the committee do now rise.

The Chair put the question on the said motion of the gentleman from Jefferson, and a vote being taken the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

Mr. J R Toole, of Deer Lodge: Your Committee of the Whole have had under consideration Proposition No. 28, have made several amendments and ask for further time to report

The President. The Chairman of the Committee of the Whole reports that the committee have had under consideration Proposition No. 28, to which certain amendments have been made, accompanied by the recommendation that the amendments as reported be adopted. The Chairman desires further time in which to prepare his report. If there be no objection, it will be printed.

Mr. Hogan, of Silver Bow: I move we take recess until 8 o'clock.

The motion was seconded

Mr Reek, of Deer Lodge: I wish to give notice that at the proper time I shall move to reconsider Section 4 of Proposition No. 27.

Mr. Burleigh, of Custer: I move that the convention do now adjourn.

The motion was seconded

The Chair put the question on the motion of the gentleman from Custer, and a vote being taken the same was declared carried by a vote of 39 in the affirmative to 23 in the negative.

The convention stood adjourned until Friday, August 2nd, 1889, at 10 A. M.

TWENTY-FOURTH DAY.

Friday, August 2nd, 1889. Morning Session.

The convention was called to order by the President at 10 A. M.

The Clerk called the roll.

The Chaplain offered prayer.

Mr. Stapleton, of Silver Bow: The Committee on Corporations desires to make a report.

The report of the Committee on Corporations, other than municipal, will be read by the Clerk.

The Clerk read as follows:

Mr. President· Your Committee on Corporations other than municipal beg to report as follows:

(Signed) G. W. STAPLETON, Chairman.

Article on Corporations other than Municipal.

Section 1. All existing charters or grants of special or exclusive privileges under which the corporations or guaranteees shall not have organized or commenced business in good faith at the time of the adoption of this constitution, shall thereafter have no validity

Section 2. No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable educational, penal, or reformatory corporations as are or may be under the control of the state; but the Legislative Assembly shall provide by general law for the organization of corporations hereafter to be created. Provided: That any such laws shall be subject to future repeal or alteration by the Legislative Assembly.

Sec. 3. The Legislative Assembly shall have the power to alter, revoke or annul any charter of incorporation existing at the time of the adoption of this constitution, whenever in its opinion it may be injurious to the citizens of the State.

Sec. 4 The Legislative Assembly shall provide by law that in all elections for directors or managers of incorporated companies every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

Sec. 5. All railroads shall be public highways, and all railroad, transportation and express companies shall be common carriers, and subject to legislative control and the Legislative Assembly shall have the power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the State. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this State and to connect at the State line with railroads of other States and Territories. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad.

Sec. 6. No railroad corporation, express or other transportation company, or the lessees or managers thereof, shall consolidate its stock, property or franchises with any other railroad corporation, express or transportation company owning or having under its control a parallel or competing line; neither shall it in any manner unite its business or earnings with the business or earnngs of any other railroad corporation.

Sec. 7. All individuals, associations and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation or express route in this State. No discrimination in charges or facilities for transportation of freight or passengers of the same class shall be made by any railroad or transportation or express company between persons or places within this State: but excursions or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad or transportation or express company shall be allowed to charge, collect or receive, under penalties which the Legislative Assembly shall prescribe. any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this State. No railroad, express or transportation company, nor any lessee, manager or other employe thereof. shall give any preference to any individual, association or corporation, in furnishing cars or motive power, or for the transportation of money or other express matter.

Sec. 8. No railroad, express or other transportation company, in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation, without first filing in the office of Secretary of State an acceptance of the provisions of this constitution in binding form.

Sec. 9. The right of eminent domain shall never be abridged, nor so constructed as to prevent the Legislative Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the police powers of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State.

Sec. 10. No corporation shall issue stock or bonds, except for labor done, services performed, or money and property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law. nor without the consent of the persons holding a majority of the stock, first obtained at a meeting held after at least thirty days notice, given in pursuance of law.

Sec. 11. No foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. And no company or corporation formed under the laws of any other country, State or Territory shall have or be allowed to exercise or enjoy within this State any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of this State.

Sec. 12. No street or other railroad shall be constructed within any city or town without the consent of the local authorities having control of the street or highway proposed to be occupied by such street or other railroad.

Sec. 13. The Legislative Assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operations, or which imposes on the people of any county or municipal subdivision of the State, a new liability in respect to transportation for considerations already past.

Sec. 14. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual shall have the right to construct and maintain lines of telegraph or telephone within this State, and connect the same with other lines; and the Legislative Assembly shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph or telephone company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquire by purchase or otherwise any other competing line of telegraph or telephone.

Sec. 15 If any railroad, telegraph, telephone, express or other corporation, organized under any of the laws of this State, shall consolidate, by sale or otherwise, with any railroad, telegraph, telephone, express or other corporation organized under any of the laws of any other state or territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the State, in all matters that may arise as if said consolidation had not taken place

Sec. 16. It shall be unlawful for any person, company or corporation to require of its servants or employes, as a condition of their employment or otherwise, any contract or agreement whereby such person, company or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employes while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employes thereof; and such contracts shall be absolutely null and void.

Sec. 17. The Legislative Assembly shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise or any of its privileges.

Sec. 18. The term "corporation" as used in this article shall be held and construed to include all associations and joint stock companies having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue, and shall be subject to be sued, in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law.

Sec. 19. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him.

Sec. 20. That no corporation, stock company, person or association of persons in the State of Montana shall directly or indirectly combine, or form what is know as a trust, or make any contract with any person or persons, corporation or stock company, foreign or domestic, through their stockholders trustees or in any manner whatever for the purpose of fixing the price or regulating the production of any article of commerce, or of the product of the soil, for consumption by the people. That the Legislature shall pass laws for the enforcement thereof by adequate penalties to the extent, if necessary for that purpose, of the forfeiture of their property and franchises, or in case of foreign corporations prohibiting them from carrying on business in this State.

On motion of Mr Hartman, of Gallatin, the reading of the report was disposed of and it was referred to the Committee on Printing and ordered to be printed.

The President: The report of the Committee on Mining and Water Rights will now be read by the Clerk.

The Clerk read as follows:

Mr. President: Your Committee on Mining and Water Rights have had under consideration Proposition No. 30 and beg leave to report the same back with the recommendation that it be not passed.

(Signed) J. R. TOOLE, Chairman.

The President: This report will go to the Committee of the Whole.

Mr. Warren, of Silver Bow: Under General Order of Business No. 4, I neglected to introduce the following:

The President: There is a memorandum of the gentleman from Silver Bow: If there be no objection, it will be read. It is, however, out of order at the present time.

The Clerk read as follows:

Helena, Montana, August 2nd, 1889.

To the President:

Whereas the laws of the United States provide for the collection of duty upon imported lead ores and under the ruling of the Treasury Department Mexican lead ores are admitted duty free when the value of their silver contents exceeds the value of the lead contents; and whereas the prosperity of Montana and the welfare of its people depends largely upon the lead mining industry, which the present ruling is fast destroying; and whereas the claims of our lead ore producers to obtain the protection already afforded them by law have been carefully and exhaustively presented to the Treasury Department and the Treasury Department has made no decision of the question presented and the uncertainty caused by this delay in referring such decisions is almost as detrimental to our interests as an adverse decision would be; and as our ore producers have no authority or statutory right to become parties to such to have justice of our claims decided by the courts:

Now, therefore, it is the sense of this convention that we, having always advocated the protection of American industries, respectfully call the attention of the President of the United States to the fact that the ruling of the Treasury Department debars a great industry of the protection accorded it by law and works great hardship upon tens of thousands of American working men, and we request him to take such measures as will secure an enforcement of the law by the Treasury Department.

The President: What is the pleasure of the convention concerning the memorandum?

Mr. Warren, of Silver Bow: I move the adoption of the resolution.

The motion was seconded.

Mr. Collins, of Cascade: I move that it be referred to the Committee on Mining and Water Rights, &c.

The motion was seconded.

The President: It is moved and seconded that the petition or resolution be referred to the Committee on Mining and Water Rights. If there be no objection, it will be so referred.

The President: The report of the Chairman of the Committee of the Whole on Proposition No. 8, General File No. 27, is now ready and will now be read by the Clerk.

The Clerk read as follows:

Mr. President: Your Committee of the Whole have had under consideration Proposition No. 28, General File No. 27, upon miscellaneous subjects and future amendments, and now beg leave to report the same back to the convention with the following amendments, and recommend that as so amended it do pass. Your committee would state that the amendments offered refer to number of liens and section and are such as appear in the printed bill.

Amend Section 1 by inserting the words "So help me God" after the word "abilities" on line 6, and also substitute the word "require" for the word "request" on the same line; and by inserting after the word "of" on line 5 in the blank space in parentheses the words "the name of his office being here inserted."

Strike out Section 8. Amend Section 9 by inserting the word "thereon" after the word "settlers" on line 2. Section 10 is stricken out and the following substituted: "The Legislative Assembly shall pass laws prohibiting the granting of free passes or the sale of tickets at a discount by any railroad or other transportation company to any state, county, district or municipal officer, except sheriffs, deputy sheriffs, constables and stock inspectors." Strike out Sections 11 and 12

Respectfully submitted,
(Signed) J. R. TOOLE, Chairman.

The President: If there be no objection, the convention will proceed to the consideration of the amendments. The report of the Chairman of the Committee of the Whole will be considered received if there be no objection, and the amendments will be taken up in their order.

The Clerk read as follows Amend Section 1 by inserting the words "So help me God" after the word "abilities" on line 6.

Mr Witter, of Beaverhead: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Beaverhead (Mr. Witter) and a vote being taken the same was declared carried.

The Clerk read as follows: And also substitute the word "require" for the word "request" on the same line.

Mr. Hartman, of Gallatin. I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Gallatin (Mr. Hartman) and a vote being taken the same was declared carried.

The Clerk read as follows: Amend by inserting after the word "of" on line 5 in the blank space in parentheses the words "the name of his office being herein inserted."

Mr. Hartman, of Gallatin: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Gallatin (Mr. Hartman) and a vote being taken the same was declared carried.

The Clerk read as follows: Strike out Section 8

Mr. Middleton, of Custer I move the adoption of the amendment.

The motion was seconded

The Chair put the question on the said motion of the gentleman from Custer (Mr. Middleton) and a vote being taken, the same was declared carried.

The Clerk read as follows: Amend Section 9 by inserting the word "thereon" after the word "settlers" on line 2

Mr. Hartman, of Gallatin: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Gallatin and a vote being taken the same was declared carried.

The Clerk read as follows: Section 10 is stricken out and the following substituted: "The Legislative Assembly shall pass laws prohibiting the granting of free passes or the sale of tickets at a discount by any railroad or other transportation company to any state, county, district or municipal officers, except sheriffs, deputy sheriffs, constables and stock inspectors."

Mr. Burleigh, of Custer. Mr President, I move that the substitute for Section 10 be stricken out entirely.

The motion was seconded

Mr. Kennedy, of Missoula: I move to amend the amendment by substituting Section 10 as in the printed copy.

The motion was seconded.

The President: The printed copy remains before the convention and is the subject for consideration The amendment offered by the Committee of the Whole was to strike it out and substitute the amendment as read. There is an amendment now offered to strike out the substitute.

Mr. Kennedy, of Missoula: My motion is to amend the amendment of the gentleman from Custer by substituting Section 10 as in the printed copy.

The President: That, as an amendment, would not be in order, because we have the printed copy of Section 10 before the convention for consideration, and neither of the two motions of the gentleman from Custer can be in order for the reason that the Committee of the Whole offered a substitute as an amendment. The gentleman moves that that substitute be stricken out. The rejection of the amendment would effect the same purpose Hence, the question now is upon the adoption of the amendment offered by the Committee of the Whole.

Mr. Burleigh, of Custer: I move that the amendment recommended by the Committee of the Whole be rejected.

Mr. Robinson, of Deer Lodge: I offer a substitute.

The President: The question now is upon the motion of the gentleman from Custer to reject the amendment offered by the Committee of the Whole.

Mr. Goddard, of Yellowstone: I hardly think that motion is in order. A vote to adopt the substitute as reported by the Committee of the Whole would have the same effect as a motion to reject it. It would be the same thing.

The President: The motion to reject is a motion that the Chair is not familiar with. The question then would be upon the adoption. The gentleman from Deer Lodge offers to amend by offering a substitute which is in order.

The Clerk read the said substitute as offered by the gentleman from Deer Lodge, as follows: Section 10. That no railroad company or other public transportation company within this State shall give or sell at a discount any ticket or pass to, or carry any judiciary officer or member of the Legislative Assembly of this State for any less sum or price than charged by said company at the regular fare for carrying passengers. Nor shall ony such judiciary officer or member of the Legislative Assembly receive any such ticket or pass, or ride in any car, boat or carriage or other vehicle of transportation for less than the regular fare charged therefor to passengers. And any such company or corporation violating the provisions of this section shall forfeit and pay to the State the sum of one thousand dollars for each such violation, to be recovered in a district court where such violation occurs. And every such judiciary officer or member of the Legislative Assembly violating the provisions of this section shall forfeit such office and be forever disqualified from holding any office of profit or emolument in this State. And the Legislature shall enact such laws as may be necessary to more effectually carry the provisions of this section into effect.

Mr. Burleigh, of Custer: The reason why I object to this section is that it partakes so strongly of legislation that I do not think it proper matter to be incorporated into the constitution, and especially is the substitute offered by my friend from Deer Lodge very obnoxious indeed.

The President: If the gentleman will indulge the Chair the question will be put before the convention and then the gentleman can have the floor.

Mr. Hartman, of Gallatin: I move the original section, that all the amendments be laid on the table.

The motion was seconded.

The President: There is a motion preceding that,—the substitute offered by the gentleman from Deer Lodge.

Mr. Callaway, of Madison: I call for the ayes and nays on the proposition.

The President: If there be no objection, the ayes and nays will be entered on the journal.

Mr. Robinson, of Deer Lodge: Before the ayes and nays are called on that—(interrupted).

The President: The question to lay on the table is not debatable. The question the convention is now considering is to lay on the table.

Mr. Middleton, of Custer: I believe I do not exactly understand what we are voting on.

The President: The question is to lay on the table the resolution offered by the gentleman from Deer Lodge as a substitute for Section 10.

Mr. Middleton, of Custer: As I understand, we are now acting on the report of the Committee of the Whole.

The President: Yes sir; and this is the amendment to the amendment of the Committee of the Whole.

Mr. Middleton of Custer: Does this carry the report of the Committee of the Whole?

The President: Yes sir, so far as that section is concerned, it carries the report with it.

The Clerk called the roll for the ayes and nays on the question of the gentleman from Gallatin (Mr. Hartman) to lay on the table the substitute offered by the Committee of the Whole with all the amendments thereto.

The vote stood as follows:

Ayes: Aiken, Bickford, Brazleton, Browne, Bullard, Burleigh, Burns, A. J.; Burns, Edward; Cardwell, Chessman, Craven, Durfee, Dyer, Fields, Gaylord, Gibson, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Hickman, Joy, Joyes, Kanouse, Knippenberg, Loud, Luce, Maginnis, Marrion, Marshall, McAdow; Middleton, Mitchell, Muth, Ramsdell, Reek, Robinson, Sargent, Whitehill, Winston, Witter—43.

Nays: Breen, Buford, Callaway, Carpenter, Cauby, Collins, Conrad, Cooper, Courtney, Dixon, Eaton, Gillette, Hershfield, Hobson, Hogan, Kennedy, Knowles, Kohrs, Myers, Parberry, Rotwitt, Stapleton, Toole, J. R.; Toole, Jos. K.; Warren, Watson, Mr. President—27.

Absent: Burns, A. F.; Mayger, Rickards, Schmidt, Webster—5.

The Chair announced the vote.

The President: The substitute offered by the gentleman from Deer Lodge together with the amendments proposed by the Committee of the Whole and all of Section 10 are laid on the table.

Mr. Maginnis, of Lewis & Clarke: I offer the following to the section.

The President: The gentleman from Lewis & Clarke offers the following as a substitute for Section 10.

Mr. Middleton, of Custer. I rise to a point of order. We are acting upon a report of the Committee of the Whole and Section 10 and a substitute and amendment have been laid upon the table.

Mr. Maginnis, of Lewis & Clarke I move to insert that as a new section.

Mr Middleton, of Custer: That would not be in order at this time. It will be in order after the amendments of the Committee of the Whole have been considered.

Mr. Maginnis, of Lewis & Clarke: I would like to have it read for information.

The President: The Clerk will read the substitute offered by the gentleman from Lewis & Clarke for information.

Mr. Hershfield, of Lewis & Clarke: I object.

The President: The reading is objected to. The Clerk will proceed with the amendment offered by the Committee of the Whole.

The Clerk read as follows: Strike out Section 11.

Mr. Hartman, of Gallatin: I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

Mr. Collins, of Cascade: I call for the ayes and nays.

The Chair put the question on the call for the ayes and nays and there not being a sufficient number to order the ayes and nays, the Chair put the question on the motion of the gentleman from Gallatin, and a division being called for the same was declared carried by a vote of 45 in the affirmative to 16 in the negative

The Clerk read as follows: Strike out Section 12.

Mr. Middleton, of Custer: I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

Mr. Hershfield, of Lewis & Clarke: Mr President, we witnessed some few days ago here a strong effort on the part of the convention to protect women—to give them the right of suffrage—certainly that simply says that they may have the power to protect themselves. The Committee on Miscellaneous Subjects thought that while this convention was willing enough to concede the proposition to them, we would concede to them the right to protect property which they have acquired and which they may hereafter acquire; and I think it is perfectly right and just and certainly the gentleman that voted in favor of granting the right of suffrage to women ought to be gallant enough to sustain this section.

Mr. Burleigh, of Custer: The gentleman is a little off (laughter) on his calculations, a very unusual thing for him, but the friends of female suffrage were fighting to have the steps in the hands of the Legislature—the representatives of the people—so that it might be bestowed if necessary, and as this matter of property is left exclusively in the hands of the legislature, I will propose to let it remain there. It is perfectly safe there: that is where we wanted the suffrage question put and if we can put the property question there, it will be perfectly safe. The majority of the people that came here will respect the rights of the ladies and what we have contended for all through is not to restrict but to leave all these doubtful questions that were legitimate in the hands of the Legislature or in other words in the hands of the people. Let the Legislature have ample power to protect the rights of the females in the enjoyment of their property just as they would have if their hands had not been tied.

Mr. Parberry, of Meagher: I think that this Section 12 ought to be stricken out. The law as it now stands says that females shall have the same right to any property as males, and leaves it right there, without requiring any record of their property. I know of suits in progress now to determine whether the property belongs to the husband or the wife and the main point in this was to require the women to keep a record of their property so that we might know to whom the property belonged, and inasmuch as the last Legislature voted to do that and just left it in such shape that they might have the same right to any property as males, we thought it right to make it obligatory on the part of the Legislature to say what property belonged to married women.

Mr. Whitehill, of Deer Lodge: I hope this section will not be stricken out. There is no subject about which there is so much confusion among the lawyers as upon the rights of property, and this section does fix those rights, and it further directs the Legislature to pass laws to determine the rights of property. I think it ought to remain. It may be said that the Legislature will pass laws covering this matter, nevertheless the Legislature has not passed laws on this and now lawyers are all at sea when questions come up regarding what property the widow is entitled to. It has to be decided by the courts before anybody can tell what is the law. There has never been any decision of the Supreme Court of this Territory to tell what it is and I am in favor of the section.

Mr. Middleton, of Custer: The section simply calls upon the Legislature to enact such laws as will define and secure to women their property rights. Now, anybody that will examine the statutes of this Territory will observe that the Legislature has intended at least to set out and define and protect those rights and would place women on exactly an equal footing with men so far as their property rights are concerned, and if they have not done that as yet, it is simply an error of judgment and not of intention so that this section will not aid the Legislature in any other respect. They have attempted to do that adready and I believe have pretty nearly succeeded in doing it. I believe that the statutes of this Territory at the present time define property in such a way that women's property rights are identical with those of men; and if it be a fact that this does not tend to aid the Legislature in arriving at a mode of particularly and clearly defining these things, of what earthly use is it? The tendency of legislation within the last 10 or 15 years in this Territory has been in the direction of placing the property rights of women on an identical footing with those of men and undoubtedly the tendency of legislation will continue in that way, and legislators to come, so far as their judgment goes, will undertake to define these matters if they are not sufficiently defined now. Now, what is the use of lumbering up a constitution with the provision? It is perfectly safe in the hands of the Legislature and this thing is simply a direction and does not indicate to them how to get at those matters. To my knowledge, the last three or four Legislatures have attempted in the best way they knew how to define these rights and that is all they can do or will do under this provison if it remains. It does not seem to me necessary to have such a provision in the constitution.

Mr. Goddard, of Yellowstone: In looking at the constitution on the rights of married women I find that Section 12 here is copied almost verbatim from Section 1432 of the constitution on that subject and it reads as follows: That the property owned by a married woman before her marriage, or that which she may acquire on her marriage, and the increase and use and profits thereof shall be exempt from all debts &c, and provides for the following declaration of a married woman as to her intention of doing business which is covered by this section in this constitution. Now, I have noticed there is a spirit prevailing that in the report that has been made by the committee where they have inserted a section, every member of that committee stands by it because it is simply in there, and they stand by it just simply for that reason—because it happens to be there. Now, sir, I for one am not in favor of legislation in this body. There is not anything in this section except pure legislation, as has been said by other members. This has been provided for by legislation for 20 years and it is safe to say that the Legislative Assembly will carry out the intention of that section without any direction from this convention.

Mr. Luce, of Gallatin: I would like to ask Mr. Goddard to read also Sections 1439 and 1442. It is provided for more clearly in those sections of the constitution. It is already in the laws of the Territory.

Mr. Whitehill, of Deer Lodge: I submit that there is not a section there that has any reference to the common property of the husband and wife. This section as we have it here directs the Legislature to provide and define the rights of the woman in relation to her separate property as well as in common with her husband, and I submit that this section here is not provided for in any section of the constitution that the gentleman has read. I think it is proper to allow it to remain if only for that very point. There is more confusion than anything else in regard to what are the rights of her own property.

Mr Burleigh, of Custer: I doubt very much whether this thing is ever settled very satisfactorily by a majority of this convention here or by a majority of the people here until some radical step is taken in the right direction, and I, therefore, ask to offer a substitute for the section. I think it will provide a panacea for all the ills in this connection and bring us out of the valley of the shadow of tribulation, if not death, and give us this temporary relief.

The President: The gentleman from Custer offers the following as a substitute for Section 12, which the Clerk will read.

The Clerk read as follows. The property rights and political rights of married women shall in all respects be placed upon an equality with the property and political rights of men.

The motion was seconded.

The Chairman stated the motion.

Mr. Parberry, of Meagher The gentleman from Custer does not come to the point The law says they shall have the same right to any property that men have. Now, the question is to determine whose property that is. Here is a married man who has horses and cattle and all kind of property, and the wife has the same right to own it as he has Well, now, I have known a suit brought where the wife claimed the property and it was not on record: and all we want is that the property of the wife shall be placed on record so that you shall know whose property it is She has the same right to own it, but it ought to be put on record.

Mr. Hartman, of Gallatin: I move that Section 12 and the amendments offered to it be laid on the table.

The motion was seconded.

The Chair stated the motion.

Mr. Callaway, of Madison. On that motion I call for the ayes and nays.

The President: There being a sufficient number to call for the ayes and nays, they will be entered on the journal.

Mr. Hickman, of Madison. I would inquire whether, if the motion prevails, it will lay Section 12 as printed on the table

The President Yes sir.

The Clerk called the roll.

The vote stood as follows.

Ayes: Breen, Burns, A F., Carpenter, Cauby, Collins, Craven, Durfee, Dyer, Eaton, Fields, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Joy, Joyes, Kanouse, Knippenberg, Loud, Luce, Maginnis, Marrion, Marshall, Middleton, Mitchell, Muth, Ramsdell, Reek, Rotwitt, Schmidt, Stapleton, Whitehill, Winston, Witter—38.

Nays: Aiken, Bickford, Browne, Buford, Bullard, Burleigh, Burns, E.; Callaway, Cardwell, Chessman, Conrad, Cooper, Courtney, Dixon, Gaylord, Hershfield, Hickman, Hobson, Knowles, Kennedy, Kohrs, Mayger, McAdow, Myers, Parberry, Robinson, Sargent, Toole, Jos. K, Toole, J. R. Warren, Watson, Mr President—32.

Absent: Brazleton, Burns , A. J., Hogan, Rickards, Webster.—5

The Chair announced the vote and declared the motion to lay on the table carried.

Mr. Kanouse of Meagher: I move to amend the proposition by striking out in Section 4 the words, "from locomotives on railroads."

The motion was seconded

Mr. Warren: I move to amend by striking out Section 4.

The President: The motion is not in order.

Mr. Joy of Park: I would like to amend the gentleman's amendment further by striking out the word in the next clause, "or from other cause."

The motion was seconded.

Mr. Middleeton of Custer: It seems to me that all these matters are out of order. We are still acting upon the report of the committee.

The Chairman reported that the convention had acted upon the report of that committee.

Mr. Kanouse of Meagher: I understand that my motion is now before the house?

The President: Yes, sir, but there is another motion to amend further by striking out the words, "or from any other cause."

Mr. Kanouse of Meagher: I undertake to say that the adoption of the amendment to the amendment would possibly defeat the intention of the committee who introduced this section. While the effect of the adoption of the amendment which I propose, I undertake to say would perhaps better carry out the intentions of that committee than to leave that language in. While upon its face such legislation is for the purpose of protecting property from damage, its real effect is to protect corporations from the effects of their acts whether they arise from negligence or accident. For instance in the absence of any such legislation as the convention would here direct the Legislature to enact, the railroad companies are responsible for the stock that they kill, but if in order to protect the stock from being killed, it is enacted that they shall fence their roads why, whenever they comply with that law, they have a prima facie defense against the claim of the owner of the stock. The consequence is that we require some such law as would require them to put spark catchers on their locomotives. Then if the damage is occasioned from fires there is a prima facie defense for them if they show that they complied with the law and they are liable for the damage if there is any. I remember some years ago, when the legislators undertook to enact a law requiring railroads to plough furrows. It was impossible for the owners of stock to prove that there was any negligence on the part of the railroad company, provided the company showed that they had plowed these furrows, in the face of the fact that the railroad company would be responsible just the same as anybody else would, for damage done to property. That is my reason for moving to strike out that language.

Mr. Joy, of Park: I am heartily in accord with the gentleman. Now. I wish to strike out in line 2 the words "from locomotives on railroads", and after the word "any" the word "other"; so that it may read, "The Legislative Assembly shall enact suitable laws to prevent the destruction by fire from any cause of the grasses and forests upon the lands of the state or upon the lands of public domain" &c

The amendment was seconded.

The President: The gentleman from Park offers to amend the amendment offered by the gentleman from Meagher by striking out the words "or from" and the word "other" in line two of Section 4.

The Chair put the question on the said motion of the gentleman from Park and a vote being taken the same was declared carried.

The President: The question now is upon the motion as amended to strike out the words, "from locomotives from railroads" in line 2 of Section 4, so that the section will then read if amended "The Legislative Assembly shall enact suitable laws to prevent the destruction by fire from any cause of grasses and forests upon lands of the state."

The Chair put the question on the said motion of the gentleman from Meagher, and a vote being taken it was declared carried.

Mr. Warren, of Silver Bow: I move to strike out Section 4.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow and a vote being taken the same was declared lost.

Mr. Whitehill of Deer Lodge: I have an amendment which I desire to offer.

The President: The gentleman from Deer Lodge offers to amend by inserting after the words 'so help me God"—if an affirmation—"under the pains and penalties of perjury."

The motion was seconded.

The Clerk read the section as the same would be amended if the amendment prevailed as follows: "I do solemnly swear that I will support, protect and defend the Constitution of the United States and the State of Montana, and that I will faithfully discharge the duties of the office (here insert the name of the office) according to law and the best of my abilities; if an oath "so help me God" and after the same words in parentheses, if on affirmation, "under the pains and penalties of perjury."

Mr. Knowles, of Silver Bow: Now, suppose a man who swore to that oath was a Quaker. Now, if you put that in there, there ought to be no objection to putting a little prayer at the end of the affirmation, that God will help that Quaker to tell the truth, but when you make the Quaker take the affirmation under the pains and penalties of perjury, you are making the Quaker a sort of individual.

Mr. Whitehill, of Deer Lodge: If this is not adopted, I submit that the words "or affirm" in brackets should be stricken out.

The Chair put the question on the said motion of the gentleman from Deer Lodge, Mr. Whitehill, and a division being called for the same was declared lost by a vote of 20 in the affirmative to 24 in the negative.

Mr. Schmidt of Silver Bow: I have an amendment which I desire to offer.

The President: The gentleman from Silver Bow offers to amend Section 6 of Proposition 28 by inserting after the words, "reason for" the words "strictly and purely" so as to read, "No perpetuities shall be allowed except for strictly and purely charitable purposes."

The motion was seconded.

Mr. Hershfield of Lewis & Clarke: Mr. President, I do not see that that strengthens the sense of the sentence at all. It says, "for charitable purposes". Now, no other construction can be placed upon that except for charitable purposes and I think the gentleman's amendment is entirely superfluous, and is just wasting the time of the convention and would not accomplish anything.

The Chair put the question on the said motion of the gentleman from Silver Bow, Mr. Schmidt, and a vote being taken the same was declared lost.

Mr. Marshall of Missoula sent up an amendment.

Mr. Kennedy of Missoula also sent up an amendment.

The President: The gentleman from Missoula offers a new section to be numbered Section 10, as follows: "No railroad or transportation company or any agent, officer or employee thereof, shall grant free passes or tickets or pass or ticket at a discount to members of the Legislative Assembly or any state or county or municipal officer, and the acceptance of any such pass or ticket by a member of the Legislative Assembly or any such officer or officers shall work a forfeiture of his or their office and the emoluments thereof; and any railroad or transportation company violating any provision of this section shall forfeit to the state five hundred dollars for each and every violation thereof, to be recovered by an action at law.

Mr Maginnis of Lewis & Clarke: I offer the following as a substitute for the gentleman's motion.

Mr. Collins of Cascade: I offer an amendment to it so as to bring it within the rule. Strike out all except "legislator" strike out "state, county and other municipal officers" and leave it to the Legislature alone.

The motion was seconded.

The President: There is an amendment offered by Mr. Marshall which the Clerk will read. It refers to Section 9. The gentleman from Lewis & Clarke (Mr. Maginnis) also offers a substitute for Section 10. The Chair is in doubt as to admitting this motion. With the exception of the penalty it is practically the same as the one voted down or laid upon the table, which can be read at any time by a motion to take from the table and reconsider; and if we go on allowing motions to be renewed simply by the change of a word, we can keep on indefinitely.

Mr. Kennedy of Missoula: I withdraw my amendment.

Mr. Marshall of Missoula: I sent up an amendment to Section 9.

The President: There is an amendment offered by Mr. Marshall of Missoula.

The Clerk read the same, as follows: Add the following at the end of Section 9. "Provided that all school land in the corporate limits of any incorporated city or town within a mile of such limits worth as much as $50 per acre shall be sold in tracts of not more than 5 acres each, and not more than one-half of such lands shall be sold before the year 1895.

Mr. Warren of Silver Bow: I move to lay the amendment on the table.

The motion was seconded.

The President: It is moved and seconded that the amendment offered by the gentleman from Silver Bow be adopted. The gentleman from Silver Bow moves to lay the amendment on the table.

Mr. Warren of Silver Bow: Out of courtesy to the gentleman, I will withdraw my motion for a moment.

Mr. Marshall, of Missoula: Mr. President, I consider this matter a very important proposition. There may be many sections of school lands in the territory to which it is applicable but there is one particular section that I do not know of, that it applies to, and I think it would be a good thing to restrict the legislature with regard to the sale of that section. It is Section 16 that lies adjoining the city of Missoula immediately west of the city between Missoula and the new race track, and has been lately established at a large expense—$10,000 or $12,000, and worth now they say or generally estimated at being worth $100,000. Missoula, as we all know, is a growing city. This section is located exactly where, if the city expands, it will cover the section. If it is sold in 40 acre tracts or 160 acre tracts or any other except small tracts, it will go into the hands of rich capitalists—speculators—against whom there can be no general competition in the sales. They will buy it up for purposes of speculation and will sell it out at an immense profit. I believe that the school funds ought to have the benefit of that profit. I believe that selling it out in small tracts and giving everybody—men of moderate means—a chance to buy a home there, will be of infinitely more advantage not only to the city of Missoula but to the school funds. Section 9 provides that actual settlers shall have the preference. The laws of the United States I believe give an actual settler upon a quarter of a section of land the right of preference to the whole quarter section. This by itself may be construed to give a person who has settled upon these school lands the preference to buy the whole quarter section I think myself that the matter is important.

Mr. Maginnis of Lewis & Clarke: I would suggest to my friend that Proposition No. 23, Public Lands, would perhaps be a better place to put this.

Mr. Marshall, of Missoula: That has been voted down, I believe.

Mr. Maginnis of Lewis & Clarke: I did not think this proposition had been acted upon.

Mr. Marshall of Missoula: The proposition as to Public Lands was —that lands should not be sold. The Educational Article directs that they shall be sold.

Mr. Hershfield of Lewis & Clarke: It leaves the matter to the legislature.

Mr. Marshall of Missoula: The proposition upon Education leaves it to the legislature to sell when and how it pleases.

Mr. Hartman of Gallatin. Sell or lease, either one. The legislature is either authorized to sell or lease as it sees fit.

Mr. Marshall of Missoula: Yes, sir, it is entirely within the discretion of the legislature and I think that the report upon Public Lands which says that the lands shall never be sold was virtually acted upon if not directly when the proposition upon Education was acted upon. It may be that this proviso, that I propose, might have come in more appropriately in the same section of the article on education, but it did not come in then, and I think it is proper and it should come in at the end of Section 9. That says that an actual settler shall have preference in the disposition of public land. To what extent shall this preference go? Because he has settled on this public land section, will not be a right to buy 40 acres of it in preference to anybody else, or will not have a right to buy 160 acres if he pays the same price that is offered by anybody else. Now, there are many men who would want homesteads upon these lands adjoining cities who would not be able to buy lands at $50 or $100 an acre as this land is worth, and they would be placed outside of that competition There would be nobody to compete except rich men; and if it is to be sold in 40 or 160 acre tracts, it reaches out of the competition of hundreds of men who would like to have five acres or less of the public lands adjoining the city, and it seems to me that it is proper that this Constitutional Convention should regulate that matter and not leave it to the legislature, and I propose that this convention shall say that land situated as this is—I do not know how many sections there are in the territory in that situation—there may not be any except this one adjoining Missoula—but it does seem to me proper that this Constitutional Convention should regulate how lands as valuable as this land, in the situation that it is, how it shall be sold by the legislatures and to provide that it shall not be sold in tracts of more than 5 acres, and provide that not more than one-half of it shall be sold in less than 5 years Half of that, that is reserved, will be worth more than the whole now But if we give to the legislature the power to sell as it pleases, influenced by any syndicate of rich men that might be formed to buy it up to sell it in 160 acre tracts or 40 acre tracts instead of going into the hands of the settlers, it goes into the hands of speculators.

Mr. Bickford of Missoula I desire to say one word on this subject. The report of the Committee on Education has been received and adopted by this convention in which it is provided that the school lands may be sold or leased

Mr. Maginnis of Lewis & Clarke· Oh no.

Mr. Bickford of Missoula· Leased or sold as the legislature may see fit and under such regulations as may be prescribed by the legislature. I desire to advocate the amendment offered by the gentleman from Missoula if that amendment is intended to allow the selling of not less amount than 5 acres, and I think it is. The fact of the case is that the tract of land referred to by the gentleman has already been settled upon by quite a number of settlers owing to the fact that the town has been growing rapidly in the direction of where this school land lies and if there be some arrangement made by the legislature by which this land could be sold or leased certainly the amendment or additional clause to the section offered by the gentleman from Missoula can do no harm, because it will as he says cut off the speculators from becoming possessed of the whole tract of land and reaping a rich reward in the future. It will allow those persons who are now living upon the land to obtain title to their land and it will result in the greatest benefit to the future state because every house that is built upon that tract adds eventually to the value of what remains of the land not built upon. I believe, sir, that the amendment offered by the gentleman from Missoula should prevail.

Mr. Marshall, of Missoula· I would like to read the other side of the section that has already been adopted in the article on education (reading) The governor, Superintendent of Public Instruction, Secretary of State and Attorney General shall constitute the State Board of Land Commissioners which shall have the direction, control, leasing and sale of the school lands of the state and lands granted or which may hereafter be granted for the support and benefit of the various State Educational Institutions under such regulations and restrictions as may be prescribed by law."

Mr Maginnis of Lewis & Clarke. If my friend will allow me, he will see that that section applies not only to the school lands but to the other lands of the state and that the part of the constitution which treats on this subject of lands, is Proposition No 23 on Public Lands which has not come up yet and where everything which we choose to adopt in reference to this matter should come in.

Mr. Marshall of Missoula: I am not particular as to what part of the constitution it should be provided in.

The President· The question is upon the adoption of the amendment.

Mr. Collins of Cascade: I move that this matter be placed upon the General File to be considered with Proposition No. 23, the report of the committee of which Mr Callaway is Chairman—Public Lands.

The motion was seconded.

Mr. Bickford of Missoula: Before the matter is put, I call attention of the convention to Section 4 of Proposition 17, General File No. 16 in which it is provided that the Governor, Superintendent of Public Instruction, Secretary of State and Attorney General, shall constitute a State Board of Land Commissioners, which shall have the direction, control, leasing and sale of the school lands of the state and the lands granted or which may hereafter be granted for the support and benefit of the various State Educational Institutions, under such regulations and restrictions as may be required by law. It may be remembered that I offered an amendment to this article providing that the legislature might—or rather, it was an amendment to the Resolution No. 8 offered by the gentleman, Mr. Luce which was considered in connection with Proposition No. 17. The amendment offered was withdrawn upon the suggestion of some gentleman because it was contended at that time that Section 4 gave to the legislature ample power to provide for the sale of and leasing of school lands. Now sir, if this proposition is germane to the subject under consideration I believe that we should take it up and consider it at this time. If it can consistently become a part of Proposition No. 28, we ought to consider it at this time and make it a part of that proposition, and I am willing if it is more germane or more pertinent to the proposition that is here—Proposition No. 23—that it should be considered in connection with that. While discussing that, it ought to be considered by this convention at the same time.

The President: The question is upon the reference to this motion to amend to the Committee of the Whole by considering in connection with Proposition 23.

The Chair put the question on the said motion stated and a vote being taken the same was declared carried.

The President: The matter is referred to the Committee of the Whole to be considered in connection with Proposition No. 23. There is now an amendment offered by the gentleman from Lewis & Clarke to constitute a new section. The number is not given, but that can be arranged, should it be adopted.

The Clerk read as follows: The legislature shall provide for the punishment of any railroad company or other corporation or any officer or employe of any corporation or of any person who shall attempt in any manner to bribe, corrupt or improperly influence any officer of this state, &c."

Mr. Maginnis: I move the adoption of that section.

The motion was seconded.

Mr. Collins of Cascade: I move to add the words "or citizen" after the word "officer."

The motion was seconded.

The Chair stated the motion.

Mr. Winston of Deer Lodge: I think Sections 42 and 43 in the article on Legislative Departments cover that.

Mr. Maginnis of Lewis & Clarke: I only intended to offer that as a substitute to Mr. Kennedy's motion which was read out of order I think.

The President: That was withdrawn.

Mr. Maginnis, of Lewis & Clarke: Very well, then, let this be withdrawn.

Mr. Eaton of Park: Offered an additional section.

The President: The gentleman from Park desires to offer a section to be incorporated in Article 27, which reads as follows:

The Clerk read: "No railroad or other transportation company or any agent, officer or employee thereof shall grant free passes or tickets or passes, or passes or tickets at a discount to members of the Legislative Assembly or of the Judiciary, and the acceptance of any such pass or ticket by a member of the Legislative Assembly or such judiciary shall work forfeiture of his or her office and the emoluments thereof and any railroad or transportation company violating the provisions of this section shall forfeit to the state $1,000 for each and every violation thereof to be recovered by an action at law."

Mr. Eaton of Park: I move the adoption of that section.

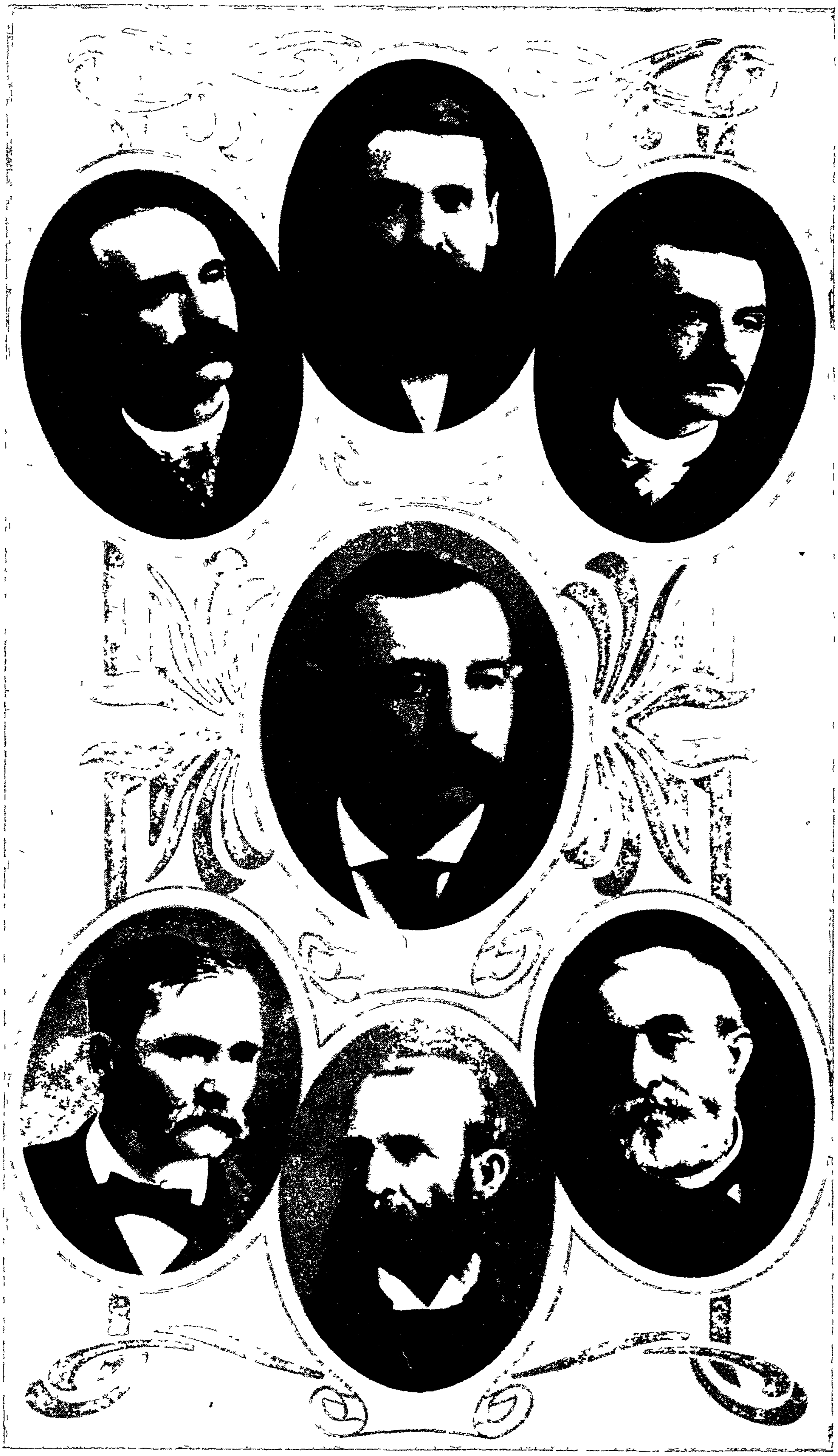
The motion was seconded.

The Chair stated the motion.

Mr. Hartman of Gallatin: I rise to a point of order. The matter contained in the amendment offered by the gentleman has beeen passed upon by this convention almost verbatim and it occurs to me that this matter is being prolonged unnecessarily.

Mr Eaton of Park: In reply to that I simply desire to say that this section as now proposed covers simply members of the Legislative Assembly and of the judiciary, and debars, as regards the former section, all state officers and county officers. It is entirely different from anything that has been voted on before, so far as I know of.

The President: The proposition is materially different in the officers that it embraces. The Choir does not desire to take the responsibility of testing a question of so much importance as this, and does not desire



EDWARD BURNS
ALFRED MYERS
HENRY KNIPPENBERG
CHARLES S WARREN
LOUIS ROTWITT
CHARLES S MARSHALL
WARREN C GILLETTE

to rule out or rule in any proposition of this kind. It can easily be reached by a vote of the convention as to whether it shall be considered or not. The Chair prefers that the convention shall determine these matters involving these questions.

Mr. Carpenter of Lewis & Clarke: I am in favor of the amendment offered by the gentleman from Park, but I think there is a very important omission. It applies only to members of the Legislature and to members of the Judiciary. It omits the State Board of Equalization who are to assess this property in different counties and omits the County Board of Equalization

Mr. Eaton of Park: I will accept that amendment.

Mr. Craven of Lewis & Clarke: I move that the amendment and original proposition be laid upon the table.

The motion was seconded.

The Chair stated the motion.

Mr. Callaway, of Madison: I call for the ayes and nays.

The President. If there be no objection, the ayes and nays will be entered on the journal. The motion is to lay the proposition of the gentleman from Park and the amendment of the gentleman from Lewis & Clarke on the table.

The Clerk called the roll.

The vote stood as follows:

Ayes: Bickford, Burleigh, Burns, Chessman, Craven, Dyer, Fields, Gibson, Goddard, Graves, Hershfield, Hartman, Haskell, Joyes, Kanouse, Knippenberg, Loud, Luce, Maginnis, Marrion, McAdow, Middleton, Mitchell, Muth, Reek, Sargent, Toole, J. K, Whitehill, Winston,—29.

Nays: Aiken, Breen, Buford, Bullard, Burns, A. F., Burns, Edward, Callaway, Cardwell, Carpenter, Cauby, Collins, Conrad, Cooper, Courtney, Dixon, Durfee, Eaton, Gaylord, Gillette, Hatch, Hershfield, Hickman, Hobson, Hogan, Joy, Kennedy, Knowles, Kohrs, Marshall, Mayger, Myers, Parberry, Ramsdall, Robinson, Rotwitt, Schmidt, Stapleton, Toole, Jos. K., Warren, Watson, Witter, Mr. President.—42.

Absent: Brazleton, Browne, Rickards, Webster—4.

The Chair announced the vote and declared the motion lost.

The President. The question now is upon the motion of the gentleman from Lewis & Clarke, Mr Carpenter, and which has been accepted by the mover of the motion. The Clerk will read the original proposition offered by the gentleman from Park as amended by the amendment of the gentleman from Lewis & Clarke.

The Clerk read as follows: "No railroad or other transportation company or any agent, officer or employee thereof shall grant free passes or tickets at a discount to members of the Legislative Assembly or of the Judiciary, or any member of the State or County Board of Equalization; and the acceptance of any such pass or ticket by a member of the Legislative Assembly or of such Judiciary or any member of the State or County Board of Equalization shall work a forfeiture of his or their office and the emoluments thereof; and any railroad or other transportation company violating the provisions of this section shall forfeit to the state $1,000 for each and every violation thereof to be recovered by an action at law."

Mr. Parberry, of Meagher: It seems to me that covers every point that we have been arguing here except one. The provisions are alright, but it does not provide that the Legislature at the first session after this constitution has been adopted shall enact such laws as will enforce this. It can lie on the legislative desks and they can pass such laws without this. I desire it should be amended in that way; that the Legislature at the first term, after this constitution has been adopted, shall enact such laws as will enforce this provision.

Mr. Craven, of Lewis & Clarke. I have noticed that when this convention runs on to legislation, that it takes up a large amount of time in discussion. The fundamental organic law is usually so clear and plain that two or three days in the discussion of a proposition is sufficient. It seems to me that if we had devoted our attention to clear fundamental law we would have been through here two weeks ago. Now, I feel free to say that I regard this section simply as so much buncombe. I impugn the motives of no member on the floor who supports or who has introduced it or anything similar to it, but it seems to me that it is clearly legislation. It has been argued that this section or a section similar to it was held in very high esteem when they voted on the constitution in 1884. I am not aware that that proposition was submitted as a separate proposition. The section, I presume, got about the same number of votes that the constitution in general did. It has been alleged that 90 per cent of the people are in favor of a proposition of this kind. If that is so, is it not entirely safe to leave the matter to the legislators of the future. It does not go far enough. We would provide that any man can have the privilege of the dining car without providing full compensation therefor and the services of the bootblack without paying full compensation therefor. Why, if we give full credence and force to all the propositions of this section, when railroads in the future got to cutting rates, certain officers of the State could not have the same advantages which are accorded to the public. A few years ago, the railroads in Minneapolis or St. Paul sold round trip tickets to Chicago at 50 cents. I understand that gentlemen of the Legislature and the officers of the State would be precluded from the advantages thus offered to the general public. It seems to me that if this is a favorite proposition in the eyes of the people there is no question that they will see that their sentiments are enacted into law. You talk about officers. You do not know that those officers 25 years hence will be in existence. It seems to me purely legislation and matter which can well be left with the people.

The President: The question is upon the adoption of the proposition.

Mr. Callaway, of Madison: I call for the ayes and nays.

Mr. J. K. Toole, of Lewis & Clarke: I desire to explain my bit in reference to this. I offered an amendment yesterday to leave this matter to the Legislature—give the future legislators the power to pass laws in reference to what is generally considered to be a strong public sentiment in regard to this matter. My objection to this is that it affects all railroad and transportation companies, and, as I said the other day, there may be a very serious question as to whether or not this can be made applicable to a railroad or transportation company, the charter of which was granted by the United States, and I think it better to leave it to the Legislative Assembly. I do not think there ought to be anything put in the constitution as to which there would be any doubt regarding its constitutionality, and, therefore, I shall vote no.

The Clerk called the roll.

The vote stood as follows:

Ayes: Alken, Breen, Buford, Bullard, Burns, A. F.; Burns, Edward; Callaway, Carpenter, Cauby, Collins, Conrad, Cooper, Courtney, Dixon, Durfee, Eaton, Gaylord, Gillette, Hershfield, Hickman, Hobson, Hogan, Joy, Kennedy, Knowles, Kohrs, Marshall, Mayger, Myers, Parberry, Ramsdell, Robinson, Rotwitt, Schmidt, Stapleton, Watson, Mr. President—38.

Nays: Bickford, Brazleton, Browne, Bullard, Burns, A. J.; Cardwell, Chessman, Craven, Dyer, Fields, Gibson, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Joyes, Kanouse, Knippenberg, Loud, Luce, Maginnis, Marrion, McAdow, Middleton, Mitchell, Muth, Reek, Sargent, Toole, Jos. K.; Warren, Whitehill, Winston, Witter—35.

Absent: Rickards, Webster—2.

The Chair announced the vote and declared the proposition of the gentleman from Park carried.

The President: Are there any other amendments to be offered to Proposition No. 28?

Mr. Warren, of Silver Bow: I move that the proposition be placed upon its final passage.

The motion was seconded.

Mr. J. K. Toole, of Lewis & Clarke: I offer an amendment to Section 1.

Mr. Callaway, of Madison: I move that the convention do now take a recess until 2 o'clock.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Madison, and a division being called for, the same was declared lost by a vote of 24 in the affirmative to 37 in the negative.

The President: The gentleman from Lewis & Clarke, Mr. Toole, offers to amend Section 1 by striking out all of the words "to-wit" in line 3 up to and including the word "abilities" in line 6 and inserting the following: "I do solemnly swear (or affirm) that I will support and defend the constitution of the United States and the constitution of the State of Montana and that I will discharge the duties of my office with fidelity; that I have not paid or contributed or promised to pay or contribute either directly or indirectly any money or other valuable thing to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law in this State or permitted it to be done by others in my behalf; that I will not individually receive directly or indirectly any money or other valuable thing for performance or non-performance of any act of duty pertaining to my office other than the compensation allowed by law. So help me God."

The amendment was seconded.

Mr. J. K. Toole, of Lewis & Clarke: Let me call attention to one error in the printed copy where the word "territory" occurs; it should be "state."

The Chair put the question on the adoption of the amendment offered by the gentleman from Lewis & Clarke, and a vote being taken the same was declared carried.

Mr. Eaton, of Park: I move that Proposition No. 28 be placed upon its final passage.

The motion was seconded.

Mr. Middleton, of Custer: It seems to me that there are so many amendments that it ought to be engrossed before being placed upon its final passage I move that it be referred to the Engrossing Committee. It certainly should be engrossed before it is read and placed upon its final passage.

The motion of the gentleman from Custer was seconded.

The Chair stated the motion.

Mr. J. K. Toole, of Lewis & Clarke. I would just like to make a suggestion with reference to this proposition, that it be printed. I think it embraces the miscellaneous subjects and I think it would be very well to have it printed with the amendments and placed on the desks of the members

Mr. Robinson, of Deer Lodge: Mr. President, there is a little amendment I desire to offer and I think probably the convention will concur with me, that ought to be placed in this bill. I do not think that it belongs to any other part of our constitution, and it probably belongs here. That is that the legislative power of this State shall extend to all rightful subjects of legislation not prohibited by this constitution or the constitution of the United States, whether enumerated in this constitution or not; so as to clothe the Legislature with power to legislate on all proper subjects which belong to the police power of the State. I offer that as a section to be numbered Section 13.

Mr. Goddard, of Yellowstone: This motion is withheld for the purpose of amendment. I have six or seven amendments which I propose to offer to this proposition.

The President: The motion to commit takes precedence of the motion to amend.

Mr. Middleton, of Custer. I am willing to accept the suggestion of the gentleman from Lewis & Clarke, and I am willing to amend, and I move that it be referred to the engrossing committee with instructions to engross and have printed.

The Clerk read Mr. Robinson's amendment

The President: Where does the gentleman desire to have this placed?

Mr. Hickman, of Madison I move that it be considered with Proposition No 19 in regard to Legislative Departments.

The President: Is there a second to the motion to adopt?

The motion was seconded.

The President: It is moved and seconded that the amendment be adopted. The gentleman from Madison moves that it be considered with Proposition No. 19 with the Legislative Departments in Committee of the Whole.

Mr. Marshall, of Missoula I was going to suggest that the report of the Committee on Legislative Departments recommends that the legislative power of the State shall be vested in the Legislative Assembly. It seeems to me that that would cover—(interrupted).

The President: This is in favor of referring to the Committee of the Whole.

The Chair put the question on the said motion of the gentleman from Madison, Mr. Hickman, and a vote being taken the same was declared carried, and the amendment of the gentleman from Deer Lodge, Mr. Robinson, was referred to the Committee of the Whole.

Mr. Burleigh, of Custer: I move the convention now take a recess until 2 o'clock.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer, Mr. Burleigh, and a vote being taken, the same was declared carried.

The convention took a recess until 2 P. M.

Friday, August 2nd, 1889. Afternoon Session.

The convention was called to order by the President at 2 P. M.

The Clerk called the roll.

Mr. Eaton, of Park: I move that the convention go into Committee of the Whole for the purpose of considering Proposition No. 19, article on Legislative Departments.

The motion was seconded.

The President: The Chair would state that Mr. Graves desired to be excused this afternoon. If there be no objection the gentleman will be excused.

The Chair stated the motion of the gentleman from Park, Mr. Eaton.

Mr. Middleton, of Custer: I renew the motion, Mr. President, that I made before the adjournment.

Mr. Eaton, of Park: I will withdraw my motion for that purpose.

Mr. Middleton, of Custer: My motion was that Article 28 be referred to the Engrossing Committee for the purpose of being engrossed in order to be printed.

The Chair put the motion of the gentleman from Custer, Mr. Middleton, that Article 28 be referred to the Engrossing Committee and a vote being taken the same was declared carried.

The President: The question is now that the convention do resolve itself into Committee of the Whole for the consideration of Article on Legislative Departments.

The Chair put the question on the said motion of the said gentleman from Park, Mr. Eaton, and a vote being taken, the same was declared carried.

The President conducted Mr. Eaton, of Park, to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Eaton, of Park, in the Chair.

The committee was called to order.

The Chairman: The Clerk will read the first section of Proposition No. 19, Article on Legislative Departments.

The Clerk read Section 1 as follows:

Section 1. The legislative power shall be vested in a Senate and House of Representatives, which shall be designated "the Legislative Assembly of the State of Montana."

Mr. Luce, of Gallatin: I think there was a resolution referred to the Committee of the Whole today in connection to this proposition—Mr. Robinson's resolution.

The Chairman: If it be the pleasure of the Committee that this be considered now, the resolution will be read for the information of the Committee.

The Clerk read Mr. Robinson's resolution as follows: That the Legislative Power of this State shall extend to all rightful subjects of legislation not prohibited by this constitution or the constitution of the United States wheher enumerated in this constitution or not.

Mr. Luce, of Gallatin: I move you, sir, that that be added to this section, connected by the word "and".

The motion was seconded.

The Chair stated the motion.

Mr. Knowles, of Silver Bow: There is no necessity for putting this provision in the constitution. When you have said the legislative power of Montana Territory shall be vested in the Legislature of the State of Montana, you have said all that is necessary. By that term you have granted the legislative power, whatever that is, and there is no necessity whatever for putting this provision in the constitution. The general rule is that when you are granting to a legislative body the legislative power, in a State constitution, you have granted them the power to legislate upon all rightful subjects of legislation. That term is implied, and it goes to that extent, or so far as it is limited by the provisions of the constitution The constitution may limit the legislative power, but so far as it is not limited by the constitution it will have that power.

Mr. J. K Toole, of Lewis & Clarke· I desire to make substantially the same statement, that whenever the legislative power is vested, it is a matter of course implied that all authority exists there except such as is in conflict with the constitution of the United States and this constitution.

Mr. Winston, of Deer Lodge, called for the reading of the amendment.

The Clerk read the same.

The Chair put the question of the motion of the gentleman from Gallatin, Mr. Luce, and a vote being taken, the same was declared lost.

The Clerk read Section 2 as follows:

Sec. 2. Senators shall be elected for the term of four years, and Representatives for the term of two years, except as is otherwise provided in this constitution

There being no amendment to Sec. 2, the Clerk read Sec. 3, as follows:

Sec 3. No person shall be a Representative who shall not have attained the age of twenty-one years, or a Senator who shall not have attained the age of twenty-five years, and who shall not be a citizen of the United States and who shall not (for at least twelve months next preceding his election) have resided within the county or district in which he shall be elected.

Mr. Myers, of Yellowstone: I move to strike out the words "twenty-five" and insert the words "twenty-one" where they occur on the second line after the words "age of."

The motion was seconded.

The Chair stated the motion.

Myers, of Yellowstone: I simply wish to say, gentlemen of the convention, that Montana has produced the famous race horse "Montana Regent" and the famous race horse "Spokane" and there is no telling what kind of material she may produce in the future.

The Chair put the question of the said amendment proposed for the gentleman from Yellowstone, Mr Myers, and a vote being taken the same was declared lost.

There being no further amendments to Sec. 3, the Clerk read Sec. 4, as follows:

Sec. 4. The Legislative Assembly of this State until otherwise provided by law, shall consist of sixteen members of the Senate and fifty members of the House of Representatives. It shall be the duty of the first Legislative Assembly to divide the State into senatorial and representative districts, but there shall be no more than one Senator from each county. The senatorial districts shall be numbered from one consecutively to correspond with the number of counties. The Senators shall be divided into two classes. Those elected from districts numbered odd numbers shall constitute one class and those elected from districts numbered the even numbers shall constitute the other class, and when any additional Senator shall be provided for by law his class shall be determined by lot. One-half of the Senators elected to the first Legislative Assembly shall hold office for one year, and the other half for three years; and it shall be determined by lot immediately after the organization of the Senate whether the Senators from the odd or even numbered districts shall hold for one or three years.

Mr. J. K. Toole, of Lewis & Clarke: I think I ought to make a statement to the committee in regard to this section. I believe it is the only proposition embodied in the article about which there was a dfference of opinion among the members of the committee. The committee were not unanimous with respect to it, but there were just enough to report the facts to the committee. They were equally divided, one member being absent at the former consideration of it. And in view of the fact, Mr. Chairman, that the Apportionment Committee were appointed with special reference to the apportionment of the Territory, and doubtless intended to be charged with the responsibility of fixing the number of persons who shall constitute the First Legislative Assembly of the State of Montana, as well as the apportionment of the State, and that subject having been committed to that committee in the constitutional convention which met four years ago. I move that when the committee rise it reports this proposition back with the recommendation that it be referred to the Committee on Apportionment and Representation.

The motion was seconded.

The Chair stated the question.

Mr. Burleigh, of Custer: I hope this motion of the gentleman from Lewis & Clarke County will not prevail. We have been here about four weeks working upon this constitution. This Proposition No. 19 has been considered in committee and reported to this convention for its action—its adption or rejection. It looks to me as though nothing could be gained but everything lost in the way of time by this reference, and whether it is to avoid action upon the matter now in convention or for the purpose of having it more deliberately considered is a question I care nothing about. It is a matter that has been as fully canvassed as any question that has or will come before this convention, and I believe the gentlemen of the convention are as well prepared to act upon it now as at any other time; and if we are to get through with our labors here in order to submit this constitution to the people for their ratification before the next meeting of Congress, I suggest that we had better proceed with these matters as they come up in their regular order here and not delay them for any purpose whatever. I hope as the matter is before the committee and as it has been considered by most of the members of the convention. that it will now take its regular course and be acted upon by the convention.

Mr. Luce, of Gallatin: This proposition was reported here July 19th; consequently, it has been on the desks of the members here for about thirteen days, and they are very likely as well prepared to consider this now as they ever will be; and further, I have not heard any request from the Committee on Apportionment that it be referred to that committee, and unless they need it or want it for any other purpose, I don't know why it should be sent to that committee, or recommended to be sent to that committee by the convention. It seems to me that it is proper to go on with this now. This is the proper place for it

Mr. Hogan, of Silver Bow: I certainly think that motion should prevail. I think ths matter should be referred to the Committee on Apportionment. I think that is what the committee was appointed for, and I think you will expedite matters by doing so, for they will bring in a report recommending the number of Senators that each county shall have in the Senate. Now, so far as time is concerned, I think the time that has been lost would cut no figure in the work we are to do, if we have to stay here all winter I think the clamor that we are wasting time comes mostly from the men who consume the most of the time of the convention. So I think this matter ought to be referred to the Committee on Apportionment. It is their duty and not the duty of the Legislative Committee.

Mr. Middleton, of Custer: As has been suggested by the gentleman from Gallatin, the whole proposition has been here for two weeks, and I presume every member has studied it perhaps more fully than he has any other proposition that has been laid on his table. It certainly is properly a part of the legislative article. The Committee on Apportionment and Representation is the smallest committee of all the standing committees. It has only three members. It has a vast amount of work to do. The matter of dividing the State, in the shape that it is, into fifty or more districts for the purposes of representations is probably the most difficult task that any committee has had to cope with in this convention, and I am satisfied, from what the Chairman of that committee has said to me, that they have enough to do without taking this matter under consideration. It will come back here to the convention undoubtedly in the identical shape that it is now. I have every reason to believe that. Now, why not consider it at this time while we are here prepared to take this legislative article up, it being properly a part of that article and not properly belonging to any other committee or to any other part of the constitution. It seems to me we ought to take it up and consider it now in connection with the rest of the legislative departments.

Mr. Joy, of Park: It seems to me, from the argument made by the gentleman from Lewis & Clarke, Mr. Toole, that he is in favor of disposing of this now. He suggests that the two committees are uncertain, and suggests what committee this belongs to, and it seems to me we would be no better off and arrive no sooner at the certainty of the thing by referring it to some other committee It would simply have the effect of delaying this matter and would take two or three days before it would come up again in the Committee of the Whole. I suggest, Mr. Chairman, that it is always proper, and a custom that is always followed in every constitution that under the head of the Legislative Departments it shall be indicated of what number the two Houses shall consist—how many members—the same as it does in this case. I suggest, Mr. Chairman, that this matter to refer this section to another committee will delay it for some time, and I hope the committee will take this matter up now and dispose of it, and I hope we will proceed with it at once

Mr J. K Toole, of Lewis & Clarke I think I ought to say to the committee that when this was reported back I had more than one interview with the Chairman of the Committee on Apportionment and Representation in regard to this matter, and was informed by him that the Committee on Apportionment had assumed jurisdiction of the subject; and I came at once to the conclusion that if that committee had gone to work for the purpose of making an apportionment of the State, the most important consideration was, what number of persons should constitute the Legislative Assembly, and if by the action of the convention at this time. or of this committee, they should change the number either of the House or of the Senate, it would necessarily follow—if they should change it from the number agreed upon by the committees as they have agreed upon it—it would necessarily follow that all of the work that had been done towards a proper and equitable apportionment of the State would go for nothing Simply for that reason and no other, I make that motion.

Mr Cooper, of Gallatin As the Chairman of the Committee of Apportionment and Representation, I simply desire to say for myself individually —and I desire to say here that this matter has not been discussed in the committee—that it is a matter of indifference whether this is considered by the committee or not In a conversation with the Chairman of the Committee on Legislative Departments, when this matter was being discussed by that committee, I told him that I thought they were dealing with a matter that did not belong to that committee Whatever disposition, however, the Committee of the Whole desires to make of this matter, it is a matter of entire indifference to me. I do not care anything about it one way or the other.

Mr Witter, of Beaverhead: The argument of the gentleman from Lewis & Clarke confirms me in the belief that we should consider this matter now. The committee then would know just what it has to work upon. It seems that that is a question of doubt in both committtees, and it should be attended to right now.

Mr. Joy, of Park I would just like to say, Mr Chairman, that my attention was called when I was speaking before, to the fact that the other constitution that was drafted in 1884 did not provide as has been stated here. I want to correct the gentleman, and anybody that will refer to that constituion of 1884 will notice that in the Legislative Department it is provided how many Senators and Representatives each House shall consist of.

Mr J K. Toole, of Lewis & Clarke: I do not propose to be misrepresented about this matter nor to make any statement to the committee which is not true. Section 4 in this article is in the old constitution under the head of Legislative Departments and provides that in the first Legislative Assembly the Legislature of the State shall consist of a certain number of persons and afterwards as provided by law, the Senate shall consist of a certain number. Under the head of Apportionment of Representations, Section 47, the matter which we are considering now, as to the first Legislative Assembly, it says: "The first Legislative Assembly held under this provision shall be constituted as follows:

The Senate shall consist of the same number of Senators, and the House of Representatives of the same number of Representatives, as the territorial council and the House of Representatives at the time of the admission of the State into the Union, and for that purpose the Council and Representative districts, as then provided by law, shall constitute the Senatorial and Representative districts for the election of Senators and Representatives of the First Legislative Assembly under this constitution."

Mr. Joy, of Park: My only point was that it had come under this head and been so recognized in all constitutions.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, Mr. Toole, that Sec. 4 be referred to the Committee on Apportionment and Representation and a division being called for, the same was declared lost by a vote of 32 in the negative to 23 in the affirmative.

Mr. Robinson, of Deer Lodge: I move to amend Sec. 4, line 2.

The Chairman: The gentleman from Deer Lodge moves to amend Sec. 4 by striking out the word "fifty" in line 2 and inserting the word "forty".

The motion was seconded.

Mr. Middleton, of Custer: I have an amendment to offer.

The Chairman: The gentleman from Custer offers the following amendment. In line 2, Sec. 4, after the word "fifty" insert the word "five".

The motion was seconded.

The Chairman: This amendment is now before the committee, being the amendment of the gentleman from Custer to insert the word "five".

Mr. Middleton, of Custer: Mr. Chairman, in connection with the amendment that I offer I simply desire to say this, that in conversing with one or two members of the Committee on Apportionment, I am informed that they find it very difficult to make an apportionment based upon the number "fifty" as provided here, and that to make it upon a basis of fifty-five they find that they can divide the counties up in such shape that in all probability it will be more satisfactory all around, and further that there should be an odd number in case of a tie vote.

Mr. Maginnis, of Lewis & Clarke: Mr. Chairman, it seems that no committee has had charge of this. This number is quite as satisfactory as any other. Now, if any committee has had charge of this matter, as the gentleman seems to infer, I would like to know the basis of representation.

Mr. Cooper, of Gallatin: 727 to each member. It figures down better and with less fractions. It is more complete and more compact than any other.

Mr. Maginnis, of Lewis & Clarke: I am quite willing to accept the number, but I wanted to know that it had been considered by somebody, and that there was a basis for it.

The Chair put the question on the said motion of the gentleman from Custer, Mr. Middleton, and a vote being taken the same was declared carried.

The Chairman: The question is now on the amendment of the gentleman from Deer Lodge, Mr. Robinson, to strike out the word "fifty" in line two and insert "forty".

Mr. Robinson, of Deer Lodge: I trust that this motion will prevail. I want to say that we do not need a Legislative Assembly larger than forty members. We have gotten along pretty well with twenty-four, and when we have to assume the burdens and expenses of it all ourselves, I do not see the use of having it more than forty. I think that is pretty liberal. That number would be amply sufficient for any purpose. The expense of fifty-five members is unnecessary. A house of forty members would be just as good a working body as a house of fifty or fifty-five. The expense of it is going to be greater, and it is a useless expense to have any more than that number. If the people were used to it, I would say amen, but I am in favor of limiting it down to forty members. I think that is amply sufficient.

The Chair put the question on the motion of the gentleman from Deer Lodge, Mr. Robinson, to insert "forty" in place of the word "fifty", and a vote being taken the same was declared lost.

Mr. Bickford, of Missoula: I move that when the committee rise that it report this section back with a recommendation that it do pass.

The Chairman: According to the rule we have adopted here such motion is unnecessary. When there are no further amendments offered we pass on to the next section.

Mr. Bickford, of Missoula: I would prefer to have a vote taken on my motion.

The motion of the gentleman from Missoula was seconded..

The Chair put the question on the said motion of the gentleman from Missoula, Mr. Bickford, and a vote being taken the same was declared carried.

The Clerk read Section 5, as follows:

"Sec. 5. Each member of the First Legislative Assembly, as a compensation for his services, shall receive six dollars for each day's attendance, and twenty cents for each mile necessarily traveled in going to and returning from the seat of government to his residence by the usual traveled route, and shall receive no other compensation, perquisite or allowance whatever. No session of the Legislative Assembly after the first, which may be ninety days, shall exceed sixty days. After the first session the compensation of the members of the Legislative Assembly shall be as provided by law Provided, that no Legislative Assembly shall fix its own compensation."

Mr. Robinson, of Deer Lodge: I have an amendment to that section.

Mr. Collins, of Cascade: I move to strike out the words "six dollars" and insert "ten dollars" on line 2.

The motion was seconded.

Mr. Robinson, of Deer Lodge: I will state to the committee what amendments I desire to put in there. I am just drawing them up. I desire to amend by striking out of line 2 the word "six" as the per diem of the members of the Legislature, and inserting "five" in lieu thereof. I desire to strike out the word "twenty" and insert "ten", and add to the section after the word "before" "that whrre passes on railroads have been received by members that those members shall have no mileage whatever. Before they get their per diem they shall make affidavit—(interrupted).

The Chairman: It will be necessary to draw that up and put it as a formal amendment in writing.

The gentleman from Deer Dodge, Mr. Robinson, sent up his amendment in writing.

The Chairman: The gentleman from Deer Lodge moves to amend Section 5 by striking out the word "six" and inserting "five", and striking out "twenty" in line two and inserting "ten"; and inserting after the word "whatever" on line four as follows: "Provided that before any mileage shall be paid to any member of the Legislative Assembly, they shall take and subscribe an oath that they did not travel to the capital on any pass or free ticket."

The motion was seconded.

Mr. Burleigh, of Custer: I would like to ask the gentleman if he will insert one other provision there which will commend it to my consideration, and that is that he shall include in that affidavit the fact that he has not also drank any free whiskey on the trip.

Mr. Bickford, of Missoula: I would ask the gentleman to insert that he shall also swear that the conductor did not fail to collect his fare.

The Chairman: The amendment is divided into three subdivisions. The first will be in line two to erase the word "six" and insert the word "five".

Mr. Collins, of Cascade: I think this is about the only proposition which should receive a little consideration, and so far as I am individually concerned, I am in favor of increasing the per diem of the members of the Legislature over the amount reported by the committee. I believe that every gentleman on this floor will admit that the members of the Legislature have not been paid as they should be for their services. They are the law-making power, and they should receive sufficient remuneration to pay their reasonable expenses and not to look to anyone or to anybody for their remuneration. I believe that five dollars a day is not enough. It is as little as the four dollars a day they receive now and ten dollars a day in my opinion is a very reasonable compensation for the services performed. We are getting out of this idea that members of the Legislature should serve for nothing. It is a wrong idea in a republican form of government. That branch of the law-making power should be better paid, in fact, than the Executive or Judiciary for the services rendered, and if we pay them better, it seems to me you will have purer and better laws. There will be less influence to bear upon the few who would be susceptible to influence. I believe that ten dollars a day is a fair compensation, and when my amendment is put before the committee I hope it will carry.

Mr. Goddard, of Yellowstone: If the compensation of the members of the Legislature is to be fixed according to the value of the services rendered, I believe that the last two or three Legislatures that have convened should not have had anything, and I do not know but what that rule ought to apply to this convention. I am not in favor of increasing or decreasing the amount of per diem as fixed by this section I think that six dollars will pay the legitimate expenses of any member of the Legislature. If he wants to indulge in the luxuries of life outside of that, let him pay it out of his own pocket.

Mr. Robinson, of Deer Lodge: If we have fifty-five members of the House and sixteen members of the Senate, there will be an expense of $426 per day for members alone, and when you come to run out the session to sixty or seventy or ninety days, we will find our Legislatures are going to be rather an expensive luxury. So far as the five dollars per diem is concerned, men do not come to the Legislative Assembly on account of the per diem there is in it. The best men do not come for that purpose. You might just as well say that the men who are here have come here for the four dollars a day that we get. I should think that the members of the convention who have come here for the pittance of four dollars a day would not come any quicker if they got ten dollars a day than they would if they got three dollars a day. It is not the amount of money that induces the best class of men to come. That is not the consideration at all. We cannot afford to pay a higher price than five dollars a day. That would more than pay any man's expenses, depending on how much whiskey he drinks, on the character of the whiskey, or where the capitol is. (Laughter) Such suggestions as the gentleman from Custer County made are well enough to burlesque and ridicule these things that we are trying to consider, but such suggestions are not compatible with good sense. (Laugter) No one would entertain such a proposition as that for a moment. It is the correct course for this convention to pursue, and if a convention wants to be carried off by burlesque and ridicule and propositions of that kind, I have nothing to say. I can stand what the balance can. But I am speaking in behalf of and in the interest of the State of Montana. I would like to see a large House, both Senate and House of Representatives, and I would like to see them paid reasonably. If we can draw on the bank on the credit of the State and the gentleman from Lewis & Clarke County will foot the bills, I will vote for the higher pay and you can run it as much higher as you like; but as the taxpayers of the State have got to foot these bills, I do not see any reason for raising the number of the Legislature or the compensation so much higher than we can afford. I believe that five dollars a day is enough.

Mr. Ramsdell, of Missoula: No doubt it is a laudable incentive that has roused the gentleman from Deer Lodge into activity, but I fail to see the good that is to be derived from these wholesale amendments. The gentleman here at one fell stroke has offered three amendments to this section and I believe that before he is through with this section he will need two or three lawyers to tell him where he stands in the matter. I think if we don't have a care in this matter that we will have to refer back all this matter to the committee, and then all of our deliberations will be fruitless.

The Chair put the question on the first subdivision of the amendment offered by the gentleman from Deer Lodge, Mr. Robinson, and a vote being taken the same was declared lost.

The Chairman: The question now comes up on the second subdivision which is to strike out the word "twenty" in the second line and insert in lieu thereof the word "ten".

The Chair put the question on the second subdivision of the amendment of the gentleman from Deer Lodge, and a vote being taken, the same was declared lost.

The Chairman: The third subdivision is to insert after the word "whatever" on line four the following "Provided that before any mileage shall be paid any member of the Legislative Assembly, they shall take and subscribe an oath that they did not travel to the capital on any pass or free ticket."

The Chair put the question on the third subdivision of the said amendment offered by the gentleman from Deer Lodge, and a vote being taken the same was declared lost.

Mr. Luce, of Gallatin: I have an amendment.

The Chairman: There is one amendment still pending. The gentleman from Cascade, Mr. Collins, moves to amend by increasing the per diem to ten dollars per day. The gentleman from Gallatin now offers the following: Amend Section 5 as follows: First, strike out of line five the following words: "after the first, which may be ninety days"; second, out of the same line the word "sixty" and insert in lieu thereof the word "ninety". So that the paragraph in lines four and five shall read "no session of the Legislative Assembly shall exceed ninety days"

There was no second to the amendment of the gentleman from Gallatin, Mr. Luce.

The Chairman: Is there a second to the amendment of the gentleman from Cascade?

The amendment of the gentleman from Cascade was seconded

Mr. Durfee, of Deer Lodge: I hope that motion will not prevail. I have made a little computation here of what the cost of our State government will be, and I find that, figuring the first session of the Legislative Assembly at ninety days, and the per diem at six dollars per day, and figuring the cost of our Judiciary and the various other State officers, it foots up to $200,340. This does not include mileage. Now, then, I think we have adopted the provision in our article on taxation that the assessment for State purposes shall not exceed two and a half mills on the dollar. Now, then, if the assessed valuation of the Territory is $100,000,000, that would be $250,000 with which to run our State government, and we find that our expenses thus far aggregate the sum of $200,000, leaving us $50,000 for incidentals Now, where are we going to get the money from to pay for the expenses of our government?

Mr. Collins, of Cascade: I would say also, Mr. Chairman, that the expenses of the State will be about $300,000, possibly a little over, but the revenue derived from the running of it will not all come from ad valorem taxes. We expect to get a good deal of revenue from other sources.

Mr. Callaway, of Madison The gentlemen have left one important item of taxable property out of their calculations When Montana becomes a State we will have 820 miles of railroad that will be taxable that is not taxed now

The Chair put the question on the said amendment of the gentleman from Cascade, Mr Collins, and a vote being taken the same was declared lost.

Mr. Clark, of Silver Bow: I move to strike out in line 5 the words "after the first which may be ninety days," so that the clause will read, "no session of the Legislative Assembly shall exceed sixty days." I will say in support of this that I believe sixty days will be all the time that will be necessary for the Legislative body to act.

Mr. J. K. Toole, of Lewis & Clarke: Perhaps the reasons ought to be stated why that was made ninety days. It was thought that in view of the fact that the Enabling Act as well as the constitution itself provided that the Legislative Assembly should do certain things in the way of legislation, and that more particularly in view of the fact that the last Legislative Assembly provided for a Code Commission to codify the laws and present them to the first Legislative Assembly, that it will involve a little more time than the ordinary sessions of the Legislature. There are three sub-divisions of the Code that are now in the hands of the Code Commission and should be submitted at the first session of the Legislature, and we thought that this extra time ought to be given on that account.

Mr. Clark of Silver Bow: I will withdraw my motion and modify it. I will move to strike out the words ninety and insert seventy-five.

The motion was seconded.

The Chair stated the motion

Mr. Middleton of Custer: I think it will be found that the first legislature will have all and more than it can do in ninety days. The Enabling Act and this constitution if it should be adopted will necessitate the change of a great many of the laws that are now on the statute books to conform with the provisions of the constitution. For instance, the change of the Judiciary system as it has been adopted will necessitate another change in the Probate Practice Act and there will be an enormous amount of work to do; that will be undoubtedly more than it will be possible for any Legislature to accomplish in ninety days; and although I am in favor of the ordinary limitation of sixty days I am satisfied that the ordinary Legislature cannot do the work in less than ninety days. And in connection with what the gentleman from Lewis & Clarke said, the entire matter of this Code that will be submitted to the Legislature by the Code Commission will have to be gone over chapter by chapter and section by section, and any person who has ever been in the Legislature can see what an enormous amount of work it is, and what a time it will take to get over it. I do not think the amendment should prevail.

The Chair put the question of the said amendment offered by the gentleman from Silver Bow, Mr. Clark, and a vote being taken the same was declared lost.

There being no further amendments to Section 5, the Clerk read Section 6 as follows:

"Sec. 6. The Legislative Assembly (except the first) shall meet at the seat of government at twelve o'clock noon, on the second Tuesday after the first Monday of January, next succeeding the general election provided by law, and at twelve o'clock noon, on the second Tuesday after the first Monday of January of each alternate year thereafter, and at other times when convened by the Governor. The term of service of the members thereof shall begin the next day after their election, until otherwise provided by law: provided that the first Legislative Assembly shall meet upon the proclamation of the Governor, after the admission of the State into the Union, upon a day to be named in said proclamation, and which shall not be more than fifteen nor less than ten days after the admission of the State into the Union."

Mr. J. K. Toole of Lewis & Clarke: I desire to offer an amendment to that section. On line seven after the word "meet" there ought to be inserted there "at the seat of the government." I move to insert those words.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, Mr. Toole, and a vote being taken the same was declared carried.

Mr. Carpenter of Lewis & Clarke: I move to strike out the words "the second Tuesday after" wherever they occur in the second and third lines.

The motion was seconded.

The Chair stated the motion.

Mr. Carpenter of Lewis & Clake: I do this for the reason that these words seem entirely incongruous there. It will take a lightning calculator to find out when the Legislature meets. I believe those words ought to be stricken out so that it will read "the Legislature shall meet on the first Monday in January." The only possible objection I can see to this, would be that some one might think it will interfere about being at home New Year's day, but I never knew anything of that kind to interfere with Legislative duty. To make it plain and simple I move to strike out those words.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, Mr. Carpenter, and a vote being taken the same was declared carried.

There being no further amendments to Section 6, the Clerk read Section 7 as follows:

"Sec. 7 No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office under the State: and no member of Congress or other person holding an office (except attorney at law, notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office."

There being no amendments to Section 7, the Clerk read Section 8 as follows:

"Sec. 8. No member of either house shall, during the term for which he shall have been elected, receive any increase of salary or mileage under any law passed during such term."

There being no amendment to Section 8, the Clerk read Section 9 as follows:

"Sec. 9. The Senate shall, at the beginning and close of each regular session, and at such other time as may be necessary elect one of its members President pro tempore. The House of Representatives shall elect one of its members as Speaker. Each house shall choose its other officers, and shall judge of the elections, returns and qualifications, of its members."

There being no amendment to Section 9, the Clerk read Section 10 as follows:

"Sec. 10. A majority of each house shall constitute a quorum, to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each house may prescribe."

There being no amendment to Section 10 the Clerk read Section 11 as follows:

"Sec. 11. Each house shall have powers to determine the rules of its proceedings, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribe, or private solicitation, and with the concurrence of two thirds to expel a member and shall have all other powers necessary for the Legislative Assembly of a free state. A member expelled for corruption, shall not thereafter be eligible to either house of the Legislative Assembly and punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense."

Mr. Middleton of Custer: I desire to offer an amendment, I desire to insert in that section after the word "member" on line four the words "for corruption." They may expel a member for corruption, but I do not believe the Legislature has power to expel a member for anything else.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer, Mr. Middleton, and a vote being taken the same was declared lost.

There being no further amendments to Section 11, the Clerk read Section 12 as follows:

"Sec. 12. Each house shall keep a journal of its proceedings and may, in its discretion, from time to time, publish the same, except such parts as require secrecy, and the ayes and nays on any question, shall, at the request of any two members, be entered on the journal."

There being no amendment to Section 12, the Clerk read Section 13 as follows:

"Sec. 13. The session of each house and of the committees of the whole shall be open, unless the business is such as requires secrecy."

There being no amendment to Section 13, the Clerk read Section 14, as follows:

"Sec. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting"

There being no amendment to Section 14, the Clerk read Section 15 as follows:

"Sec. 15. The members of the Legislative Assembly shall, in all cases, except treason, felony, violation of their oath of office, and breach and surety of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to and returning from the same: and for any speech or debate in either house they shall not be questioned in any other place."

There being no amendment to Section 15, the Clerk read Section 16 as follows:

"Sec. 16. The House of Representatives shall have the sole power of impeachment. The concurrence of a majority of all the members shall be necessary to an impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose the Senators shall be under oath or affirmation to do justice according to law and evidence. When the Governor or Lieutenant Governor is on trial, the chief justice of the Supreme Court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected."

Mr. J. K. Toole of Lewis & Clarke: I would like to ask my colleague from Lewis & Clarke, Governor Carpenter, whether that is consistent with the provision that went into the Judiciary article.

Mr. Carpenter of Lewis & Clarke: There was nothing done with it. I offered an amendment but withdrew it because it was provided for here.

There being no amendment to Section 16, the Clerk read Section 17 as follows:

"Sec. 17. The Governor and other State and Judicial officers, except county judges and justices of the peace, shall be liable to impeachment for high crimes and misdemeanors or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust or profit in the State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial judgment, and punishment according to law.

Mr. Burleigh of Custer: On line two section 17, I move to strike out "county judges" before the word "justices." There are no county judges known to the constitution.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer, Mr. Burleigh, and a vote being taken the same was declared carried.

There being no further amendments to Section 17, the Clerk read Section 18 as follows:,

"Sec. 18. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law."

There being no amendment to Section 18, the Clerk read Section 19 as follows:

"Sec. 19. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose."

There being no amendment to Section 19, the Clerk read Section 20 as follows:

"Sec. 20. The enacting clause of every law shall be as follows: 'Be it enacted by the Legislative Assembly of the State of Montana'."

There being no amendment to Section 20 the Clerk read Section 21 as follows:

"Sec. 21. No bill for the appropriation of money, except for the expenses of the government shall be introduced within ten days of the close of the session, except by unanimous consent of the house in which it is sought to be introduced."

Mr. Winston of Deer Lodge: I have a substitute to offer for Section 21.

The Chairman: The gentleman from Deer Lodge, Mr. Winston, moves to strike out Section 21, and insert in lieu thereof the following:

"Sec. 21. No act of the Legislative Assembly except a general appropriation act shall take effect or go into force until sixty days after the adjournment of the session at which it was enacted, unless in case of emergency which emergency must be expressed in the preamble or the body of the act, unless the Legislative Assembly shall by a vote of two-thirds of all the members elected to each house, otherwise direct. No bill shall be introduced in either house after the expiration of fifty days from the commencement of the session without the unanimous consent of the members thereof."

The motion was seconded.

Mr. Winston of Deer Lodge: It is simply the section that was in the constitution of 1884, and I was in favor of inserting it as one of the committee when the committee had it under consideration, and I believe it would be well to insert it here. It provides when the law shall take effect except in cases of emergency, and the law as it now stands says that it shall take effect at the seat of government the day it is passed and that there shall be one day allowed for each fifteen miles. People don't know exactly what the difference is between the seat of government and other places. It would give rise to confusion, and it seems to me that it is well enough to provide when these laws shall go into effect, so that everybody will know when they do go into effect. And it is well to insert it here; and as for the section providing that no bill for the appropriation of money shall be introduced after the expiration of fifty days, it is simply the same as in the section, except it says ten days here. It is virtually the same.

Mr. Hartman of Gallatin: It seems to me there are very serious objections to that clause which says that no bill shall be introduced after fifty days. I understand that the constitution provides that the first Legislature shall sit ninety days.

Mr. Clark of Silver Bow: In that case, Mr. Chairman, one man could block all legislation after the fifty days, and if it was ninety days' session they would have nothing to do. I am in favor of the amendment with the exception of that part. If the gentleman will make that ten days I will vote for it.

Mr. Middleton of Custer: I would say, Mr. Chairman, that as to this matter of the law not taking effect until sixty days after it is passed, the question was very fully discussed in both houses of the Legislature last winter. The law at that time provided that acts should take effect at the seat of government immediately and at other places there should be one day allowed for every fifteen miles of distance, and I believe that was introduced to amend that or rather to appeal it, so that the law should take effect in all parts of the territory as of the date of the passage, unless otherwise provided in the act itself, and there were some two or three substitute and amendments offered in both houses to that, and it finally passed in that shape. I think it would in many cases work a good deal of hardship as it now exists.

Mr. Clark of Silver Bow. If the gentleman is willing to amend that, instead of having it fifty days, within ten days after the time of the adjournment, I am in favor of the amendment offered by the gentleman for the reason that to make a law effective from and after its passage might work a great hardship. A man might commit an infraction of the law and not know it and life is too short to be figuring out one day for each fifteen miles on an action in court. I believe in doing away with all such trifling complications as that.

The Chairman. If the gentleman will pardon me one moment it was understood that permission was granted to the gentleman to modify his substitute.

Mr. Burleigh of Custer This matter has been left to the Legislature before, and we have had no trouble. There has been no embarrassment and nobody has suffered for want of knowledge of the law, and as this is a matter which belongs purely to the Legislature and has been exercised by the Legislature, it seems to me it should be left for the Legislature. Of course, it is perfectly proper for the Legislature to make any laws that it sees fit. and I don't see any necessity for stopping here to insert it in the constitution.

The Chairman: The substitute as modified reads as follows: "No act of the Legislative Assembly except the General Appropriation Act shall take effect or go into force until sixty days after the adjournment of the session at which it was enacted, unless in case of emergency; which emergency shall be expressed in the preamble or in the body of the act, the Legislative Assembly shall by a vote of two thirds of all the members elected to each house otherwise direct No bill shall be introduced in either house within ten days of the close of the session without the unanimous consent of the members thereof." It is moved and seconded that this be adopted

Mr. Knowles, of Silver Bow I do not exactly know that I understand that, but it might be that that would conflict with what might be called local option laws; it might be that sometimes the Legislature would want to pass a law which shall take effect upon the happening of some event, such as vote of the people, or pass a law for the changing of a county seat. which shall take effect upon the vote of the people, or by proclamation of the Governor, and I am not sure that that would not conflict with it.

Mr. Clark of Silver Bow: No; it is less. It provides that it shall be less, it does not provide positively that it shall take effect in sixty days, but still I don't know but that construction might be placed upon it.

Mr. Craven of Lewis & Clarke: I simply rise to suggest that there are provisions in this clause which would be very embarrassing in case of extra session called by the Governor, which sessions are provided for in this proposition. If you cannot introduce any bill within ten days of the close of the session except by unanimous consent, some individual might block the proceedings in every extra session that was called, so that nothing could be accomplished

The Chairman: The question is on the adoption of the substitute.

The Chair put the question on the adoption of the said substitute and a vote being taken the same was declared lost

Mr. Craven, of Lewis & Clarke: I may be pardoned. I would say that the same objection portends to the matter as it is. It seems the committee ought to take charge of that and see that the difficulty is obviated.

Mr. Middleton of Custer: I think that the suggestion that the gentleman makes is a very good one, and I move you that after the word "session" in line two, Section 21, or before the word "session" to insert the words "any regular" and strike out the word "the", making it "any regular session."

The motion was seconded.

The Chair stated the motion.

Mr. Muth of Lewis & Clarke: This section applies only to bills for the appropriation of money and not to bills of a general character, and is inserted here by the committee to obviate the possibility of the Legislature in the last days of its session running through bills for the appropriation of money. It applies to nothing else, but simply to appropriation bills—any bill for the appropriation of money for the expense of government, and it seems to me that it is entirely proper that it should not be changed even to apply as well to special sessions as to regular sessions.

Mr. Clark of Silver Bow: Extraordinary sessions of the Legislature might be called for the express purpose of appropriating money.

Mr. J. K. Toole of Lewis & Clarke: The clause is a precautionary measure against railroading claims against the state through at the end of the session. It is designed simply to cut off that class of legislation which most frequently comes in just at the close of the session.

The Chair put the question on the motion of the gentleman from Custer, Mr. Middleton, and a vote being taken the same was declared lost.

There being no further amendments to Section 21, the Clerk read Section 22 as follows:

"Sec. 22. No bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members."

There being no amendment to Section 22, the Clerk read Section 23 as follows:

"Sec. 23. No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

Mr. Carpenter, of Lewis & Clarke: I see general appropriation bills are excepted because it seems to be assumed that there would be several subjects in the bill. That is the view taken here. If those bills are excepted I think it would be well enough to add, and I move to add "except general appropriation bills and bills for codification and general revision of the law," because the question might arise whether the Code bills might not provide different provisions.

The motion was seconded.

The Chairman: It is moved and seconded that in Section 23 of line one after the word "bills" there shall be inserted the following words "and bills for codification and general revision of the laws."

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, Mr. Carpenter, and a vote being taken the same was declared carried.

There being no further amendments to Section 23, the Clerk read Section 24 as follows:

"Sec. 24. No bill shall become a law, except by a vote of a majority of all the members present in each house nor unless on its final passage the vote be taken by ayes and nays, and the names of those voting be entered on the journal."

Mr. Winston of Deer Lodge: I move to strike out the words "present in" and insert the words "elected to". I do not think that the majority of the members present in each house should be able to pass a bill. There is a provision here that prescribes that when members are absent they shall be brought into the house, and I am certainly in favor of that amendment —striking out the words "present in" and inserting the words "elected to."

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Deer Lodge, Mr. Winston, and a division being called for the same was declared carried by a vote of thirty-nine in the affirmative to twenty-six in the negative.

There being no further amendments to Section 24, the Clerk read Section 25 as follows:

"Sec. 25. No law shall be revised or amended, or the provisions thereof extended, by reference to its title only, but so much thereof as is revised, amended, or extended, shall be re-enacted and published at length."

There being no amendment to Section 25 the Clerk read Section 26 as follows:

"Sec. 26. The Legislative Assembly shall not pass local or special laws in any of the following enumerated cases; that is to say: For granting divorces, laying out, opening, altering or working roads or highways, vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates, or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions, or giving effect to informal or invalid deeds; summoning or impanelling grand or petit juries, providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election, or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; remitting fines, penalties or forfeitures; creating, increasing or decreasing fees, percentage, or allowances of public officers; changing the law of descent; granting to any corporation, association, or individual, the right to lay down railroad tracks, or any special or exclusive privilege, immunity, or franchise whatever; for the punishment of crimes, changing the names of persons or places; for the assessment or collection of taxes; affecting estate of deceased persons, minors, or others under legal disabilities; extending the time for the collection of taxes: refunding money paid into the State treasury; relinquishing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this state, or to any municipal corporation therein legalizing, except as against the state, the unauthorized or invalid act of any officer; exempting property from taxation: restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension, or impairing of liens; creating offices, or prescribing the powers and duties of officers in counties, cities, townships, election or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable no special law shall be enacted."

Mr. Hershfield, of Lewis & Clarke: I would like to get the sense of the convention upon this question, line 13. On line 13 after the words "granting to any corporation" insert the words "banking, insurance or loan and trust companies" I move that that be inserted.

The motion was seconded

The Chairman· The gentleman moves to amend by inserting in line 13 after the word "corporations" the words "banking, insurance or loan and trust companies," so that it will read "granting to any corporation, banking, insurance or loan and trust companies, association or individual, the rght to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever."

Mr Goddard, of Yellowstone: Banking, insurance and loan and trust companies don't ordinarily lay tracks.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, Mr. Hershfield, and a vote being taken the same was declared lost.

Mr. Robinson, of Deer Lodge: I would like to ask the meaning of one word that I see in here that I don't comprehend. It is on line 24. The word "legitimation", I want to vote for that if I know what that word means. (Laughter)

The Chairman: There is nothing pending before the committee.

Mr. Robinson, of Deer Lodge· I move to amend by striking out that word and making it "legitimatization". As that word is now I don't know what it means.

The motion was seconded.

The Chairman: The gentleman moves to strike out the word "legitimation" and insert "legitimatization". (Laughter)

Mr. Middleton, of Custer: I had some doubt about the word myself, but Webster defines the word "legitimation" as the act of rendering legitimate. I guess the word as it is is about as proper a word as you can get.

The Chair put the question on the said motion of the gentleman from Deer Lodge, Mr. Robinson, and a vote beng taken the same was declared lost.

Mr. Carpenter, of Lewis & Clarke: In line 20, I move to strike out the words "legalizing, *except as against the State, the unauthorized or the* invalid act of any officer." Now, as a general proposition, it is all right as it is, but in the case of remedies to prevent wrongs, it is often proper and uniform, and therefore, an illegal act of an officer should be validated. Therefore, I move to strike those words out.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, Mr. Carpenter, and a vote being taken the same was declared carried.

Mr. Carpenter, of Lewis & Clarke: I think in the same relation the words "or giving effect to informal or invalid deeds" in lines 7 and 8 should be stricken out. I move to strike those words out.

The motion was seconded

The Chair stated the motion.

Mr. J. K. Toole, of Lewis & Clarke: I do not see, Mr. Chairman, how it does any good to strike any particular items out in this enumeration unless you go farther and strike out the last paragraph in the act which provides that "any and all other cases where a general law could be made applicable." In reference to the particular subject the gentleman speaks of, it could be cured by general deed touching all informalities of that particular kind, and so if it could be brought within the the meaning of the last paragraph it would be covered whether it is inserted in here or not.

Mr. Carpenter, of Lewis & Clarke: My desire was to avoid to a certain extent the mischief of the general laws in applying to particular cases. You have got to change the law every time you meet a particular emergency. More mischief is caused by that than by passing a special act.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, Mr. Carpenter, and a division being called for, the same was declared lost by a vote of twenty-three in the affirmative to twenty-four in the negative.

There being no further amendments to Section 26, the Clerk read Section 27, as follows:

"Sec. 27. The presiding officer in each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the Legislative Assembly immediately after their titles have been publicly read; and the fact of signing shall be at once entered upon the journal."

There being no amendment to Section 27, the Clerk read Section 28, as follows:

"Sec. 28. The Legislative Assembly shall prescribe by law the number, duties and compensation of the officers and employes of each house; and no payment shall be made from the State Treasury, or be in any way authorized to any such person, except to an acting officer or employe elected or appointed in pursuance of law."

There being no amendment to Section 28, the Clerk read Section 29, as follows:

"Sec. 29. No bill shall be passed giving any extra compensation to any public officer, servant, or employe, agent, or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim against the State without previous authority of law, except as may be otherwise provided herein."

There being no amendment to Section 29, the Clerk read Section 30, as follows:

"Sec. 30. All stationery, printing, paper, fuel and lights used in the legislative or other departments of government, shall be furnished, and the printing and binding and distribution of the laws, journals and department reports and other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the Legislative Assembly, and its committees, shall be performed under contract, to be given to the lowest bidder, below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any wise interested in any such contract; and all such contracts shall be subject to the approval of the Governor and State Treasurer."

There being no amendment to Section 30, the Clerk read Section 31, as follows:

"Sec. 31. Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment; provided, that this shall not be construed to forbid the Legislative Assembly from fixing the salaries or emoluments of those officers first elected or appointed under this constitution, where such salaries or emoluments are not fixed by this constitution.

There being no amendment to Section 31, the Clerk read Section 32, as follows:

"Sec. 32. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose amendments, as in the case of other bills."

Mr. Carpenter, of Lewis & Clarke: I move to strike out Section 32. I see no reason whatever for having this section here.

The motion was seconded.

Mr. Carpenter, of Lewis & Clarke. The Senators and members of the House of Representatives are the same Each body has the same interest in all bills, and I see no reason why one house should be preferred to the other.

Mr. J. K. Toole, of Lewis & Clarke: I do not know myself unless it was in the rule prevailing so far as the Congress of the United States is concerned, and perhaps that also in the Senate, that one-half of the body is continued over from year to year, and that it might be supposed they would have more information respecting the money that was necessary to administer the affairs of government I do not think there was any consultation about it in committee one way or the other.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, Mr. Carpenter, and a division being called for the same was declared lost by a vote of twenty-five in the affirmative to thirty-one in the negative.

There being no further amendments to Section 32, the Clerk read Section 33, as follows:

"Sec. 33. The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the State, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject."

There being no amendment to Section 33, the Clerk read Section 34, as follows:

"Sec. 34. No money shall be paid out of the treasury, except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof."

There being no amendment to Section 34, the Clerk read Section 35, as follows:

"Sec. 35. No appropriations shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the State, nor to any denominational or sectarian institution or association."

There being no amendment to Section 35, the Clerk read Section 36, as follows:

"Sec. 36. The Legislative Assembly shall not delegate to any special commission, private corporation or association any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes, or to perform any municipal function whatever.

There being no amendment to Section 36, the Clerk read Section 37, as follows:

"Sec. 37. No act of the Legislative Assembly shall authorize the investment of trust funds by executors, administrators, guardians or trustees in the bonds or stock of any private corporation."

There being no amendment to Section 37, the Clerk read Section 38, as follows:

"Sec. 38. The Legislative Assembly shall have no power to pass any law authorizing the State, or any county in this State, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same."

There being no amendment to Section 38, the Clerk read Section 39, as follows:

"Sec. 39. No obligation or liability of any person, association or corporation, held or owned by the State, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed. or in any way diminished by the Legislative Assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury."

There being no amendment to Section 39, the Clerk read Section 40, as follows:

"Sec. 40. Every order, resolution or vote, in which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of the business of the two houses, shall be presented to the Governor, and before it shall take effect be approved by him. or, being disapproved, be repassed by two-thirds of both houses, as prescribed in the case of a bill."

There being no amendment to Section 40, the Clerk read Section 41, as follows:

"Sec. 41. If any person elected to either house of the Legislative Assembly shall offer or promise to give his vote or influence in favor of or against any measure or proposition, pending or proposed to be introduced into the Legislative Assembly, in consideration or upon condition that any other person elected to the same Legislative Assembly will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced into such Legislative Assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the Legislative Assembly shall give his vote or influence for or against any measure or proposition, pending or proposed to be introduced into such Legislative Assembly, or offer, promise or assent so to do, upon condition that any other member will give, or will proomise or assent to give his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced in such Legislative Assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such Legislative Assembly, he shall be deemed guilty of bribery, and any member of the Legislative Assembly, or person elected thereto, who shall be guilty of either of such offenses, shall be expelled, and shall not thereafter be eligible to the Legislative Assembly. and, on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law."

Mr. Middleton, of Custer: I move to strike out Section 41.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer, Mr. Middleton, and a vote being taken the same was declared lost.

There being no further amendments to Section 41, the Clerk read Section 42, as follows:

"Sec. 42. Any person who shall directly or indirectly offer, give or promise, any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer, or member of the Legislative Assembly, to influence him in the performance of any of his official or public duties, shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law."

There being no amendment to Section 42, the Clerk read Section 43, as follows:

"Sec. 43. The offense of corrupt solicitation of members of the Legislative Assembly, or of public officers of the State, or of any municipal division thereof and the occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment."

There being no amendment to Section 43, the Clerk read Section 44, as follows:

"Sec. 44. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislative Assembly shall disclose the fact to the house of which he is a member, and shall not vote thereon."

Mr. Conrad, of Choteau: I wish to offer an additional section.

Mr. Winston, of Deer Lodge: I have an additional section to be called Section 45.

The Chairman: The gentleman from Choteau, Mr. Conrad, offers the following to be numbered Section 45:

"The Legislature shall provide for a State Examiner who shall be appointed by the Governor and confirmed by the Senate. His duty shall be to examine the accounts of the State Treasurer, Supreme Court Clerks, District Court Clerks and all County Treasurers, and Treasurers of such other public institutions as may be prescribed by law. He shall report at least once a year and oftener if required to such officer as may be designated by the Legislature. His compensation shall be fixed by law."

Mr. Conrad, of Choteau: I move the adoption of that section.

The motion was seconded.

The Chairman: The following is also introduced as a proposed section to be numbered Section 45.

"Sec. 45. When vacancies occur in either house the Governor or a person exercising the functions of the Governor shall issue writs of election to fill the same." Offered by Winston.

Mr. Winston, of Deer Lodge: I move the adoption of the section.

The motion was seconded.

Mr. Burleigh, of Custer: In regard to the motion offered by the gentleman from Choteau County I desire to say—(interrupted)

The Chairman: I will say to the gentleman that this substitute or proposed new section last read is now before the house.

Mr. Winston, of Deer Lodge: I think the constitution has previously provided that any vacancy in a state office shall be filled by appointment. There is also an article that provides that when any county office is vacated by death, resignation or otherwise, that the proper parties shall appoint but there is nowhere in this constitution a provision for the filling of vacancies in the Legislative Assembly, and for that reason I offer that section.

The Chair put the question on the motion of the gentleman from Deer Lodge, Mr. Winston, and a vote being taken the same was declared carried.

Mr. Conrad, of Choteau: I renew my motion on the adoption of the section which I introduced, and desire to have it numbered 46.

Mr. Burleigh, of Custer: Now, Mr. Chairman, I desire to say regarding this motion made by my friend from Choteau County that it provides for the creation of one of the most important offices under this constitution. We have suffered immeasurably in a great many ways, and have been greatly inconvenienced for want of an officer of this character, and I think a State Examiner, with duties defined, as defined in this section, should be provided for in this constitution. I am satisfied that it will save the Territory a large amount of money. It will quiet the public mind in regard to public officers, and it will tend to keep the accounts of our public officers straight, if not entirely so, at least more so than they are now.

Mr. Collins, of Cascade: Mr. President, I believe we should adopt this in our constitution. There is not another officer named in the constitution who has the time even, if the authority was conferred upon him by law, to perform the duties specified. It is necessary that someone should perform those duties, and I hope that the section will carry.

Mr. Middleton, of Custer: I am very much in favor of that office being created by the constitution. Those states that have a Public Examiner have in a very short time seen the benefit that is to be derived from that kind of an officer. I know in the State of Minnesota when they first enacted the law there providing for a Public Examiner, during the first two years the whole system of accounts in the different counties in the State were revolutionized, and it was found in some of the counties that the accounts were being kept in such shape that no human being could tell how the county stood financially. There was also some such state of affairs in relation to the State officers. I believe it is an office that should be created and a good compensation fixed for it, so as to secure the most competent service that can be had in the State. I do not know, however, that it is a matter that should be added as a section in this proposition, but should certainly be provided in this constitution somewhere.

Mr. Conrad, of Choteau: I would say to the gentleman that I offered a resolution which was referred to the Executive Committee and was by them overlooked. I asked Major Maginnis what action was taken on it, and he said it laid on his desk, and that he had forgotten to bring it before the committee

Mr. Collins, of Cascade: I would like to suggest as an amendment, with the consent of the gentleman, to add after the word "law" the words "and such other duty as shall be prescribed by law." The Legislature may provide that he shall do such other duties.

Mr. Conrad, of Choteau: I accept that amendment.

The Chairman: The section is amended by consent so as to read as follows: "The Legislature shall provide for a State Examiner who shall be appointed by the Governor and confirmed by the Senate. His duties shall be to examine the accounts of the State Treasurer, Supreme Court Clerks, District Court Clerks, and all County Treasurers, and Treasurers of such other public institutions as may be prescribed by law, and such other duties as the Legislative Assembly may prescribe. He shall report at least once a year and oftener if required, to such officers as may be designated by the Legislature. His compensation shall be fixed by law."

The Chair put the question on the said motion of the gentleman from Choteau, Mr. Conrad, and a vote being taken the same was declared carried.

Mr. Hershfield, of Lewis & Clarke: I would like to have the following inserted in Section 26. In line 11 after the word "charter" and before the word "or" insert the following words: "Banks, insurance companies or loan and trust companies," so that it shall read, beginning with line 11, "To minors or other under disability: Chartering banks, insurance companies or loan and trust companies or licensing ferries or bridges or toll roads." I make that motion.

The motion was seconded.

The Chair stated the motion.

Mr. Hershfield, of Lewis & Clarke: In looking over this schedule I find there is nothing said in regard to these institutions, and it is very important that the Legislature shall not be permitted to grant special charters for an institution of that kind, but should act under the general law. I think it is quite proper that it should be inserted.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, Mr. Hershfield, and a vote being taken the same was declared carried

Mr. Marrion, of Missoula: I desire to offer an amendment to Section 30. In line five insert the words "and most responsible" after the word "lowest", and before the word "bidder", so that it shall read "to be given to the lowest and most responsible bidder."

The motion was seconded.

The Chair stated the motion.

The Chair put the question on the said motion of the gentleman from Missoula, Mr. Marrion, and a vote being taken the same was declared carried.

Mr Hickman, of Madison: I desire to offer an amendment.

The Chairman: The gentleman from Madison offers an amendment to Section 4 by adding thereto the words "except interest upon the public debt."

The motion was seconded.

The Chair stated the motion.

Mr. Hickman, of Madison: I thought that I could discover where a Treasurer might be hampered in paying coupons upon public debts outside of the State, when he had an agency in New York for paying the coupons there. If they were required to be all paid here it would be a different thing, but if the coupons were there and the interest on the public debt had to be paid there in New York where the bonds were held, or might be paid, then he would not know what amount to have a warrant drawn for.

Mr. Hershfield, of Lewis & Clarke: The gentleman from Madison is quite correct. The insertion ought to be made and I hope the motion will carry.

The Chair put the question on the motion of the gentleman from Madison, Mr. Hickman, and a vote being taken the same was declared carried.

Mr. Joy, of Park: I move you, sir, that this committee rise, and report back Proposition No. 19 with the recommendation that it do pass as amended.

The motion was seconded.

The Chair stated the motion.

Mr. Clark of Silver Bow: In line 11, Section 26, I presume the object of the clause in reference to chartering or licensing ferries or bridges or toll roads, was to prevent chartering these companies. Now, the effect of the amendment of Mr. Hershfield, which has been adopted, takes away the effect of the word "chartering" upon the words "ferries, bridges or toll roads," and it reads the way it is now "chartering banks, insurance or loan and trust companies, or licensing ferries, bridges or toll roads." It takes the effect of the words "chartering" from the words "ferries, bridges and toll roads." Now, I move to amend that section by leaving line 11 as it stands in the printed copy and inserting after the word "bridges" these words "chartering banks, insurance companies and loan and trust companies"

The motion was seconded.

The Chair stated the motion.

Mr. Clark, of Silver Bow. It is Mr. Hershfield's amendment precisely, only it makes a separate clause of it.

Mr. Hershfield, of Lewis & Clarke: There will be no objection to that. I accept the amendment.

Mr Clark, of Silver Bow: Of course, the amendment contemplates striking out the words inserted in the original amendment offered by Mr. Hershfield as they were then inserted.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Clark, and a vote being taken the same was declared carried.

Mr. Joy, of Park: I move you, sir, that the committee do now rise.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Park, Mr. Joy, and a vote being taken the same was declared carried

---

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

Mr. Eaton, of Park: Mr. President, the Committee of the Whole have had under consideration Propositon No. 19, and have directed me to report back the same with amendments. I would like reasonable time to prepare the report.

The President: The Chairman of the Committee of the Whole reports that he has been instructed to report back Proposition No. 19, with the amendments as adopted, with the recommendation that they be passed, and he asks further time in which to prepare his report. If there be no objection this will be granted.

Mr. Reek, of Deer Lodge: I move you that we now reconsider the vote by which Section 4, Proposition No. 27, was lost.

The motion was seconded.

Mr. Bickford, of Missoula: I rise to a point of order. The gentleman voted with the minority and he cannot vote to reconsider.

Mr. Reek, of Deer Lodge: Yes sir, I voted against the measure.

Mr. Burleigh, of Custer: I would inquire if the ayes and nays were taken upon the question.

The President: The Chair understands that the vote which the gentleman desires to have reconsidered was the vote by which Section 4 was indefinitely postponed

Mr. Collins, of Cascade I would like to see on which side of the question the gentleman voted.

The President: The Clerk informs the Chair that the gentleman voted in the affirmative with the majority.

The question is upon the motion to reconsider.

Mr. Hickman, of Madison: I move to lay that motion on the table.

The motion was seconded.

Mr. Middleton, of Custer: On that motion I call for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal. The question is on the motion to reconsider the vote by which the consideration of Section 4, Proposition No. 27, was indefinitely postponed.

The Clerk read said Section 4, Proposition No. 27, being the substitute offered by the gentleman from Silver Bow, Mr. Dixon, for the information of the convention.

The Clerk called the roll.

The vote stood as follows:

Ayes: Breen, Browne, Buford, Bullard, Burns, A. F.; Burns, A. J.; Burns, Edward; Callaway, Chessman, Collins, Craven, Dyer, Eaton, Gibson, Hammond, Hartman, Hickman, Hogan, Joy, Kennedy, Knippenberg, Maginnis, Mayger, Parberry, Robinson, Rotwitt, Sargent, Stapleton, Witter, Mr. President—30.

Nays: Aiken, Bickford, Burleigh, Cardwell, Carpenter, Cauby, Conrad, Cooper, Courtney, Dixon, Fields, Durfee, Gaylord, Goddard, Haskell, Hatch, Hershfield, Hobson, Joyes, Kanouse, Knowles, Kohrs, Loud, Luce, Marrion, Marshall, McAdow, Middleton, Mitchell, Muth, Myers, Ramsdell, Reek, Schmidt, Toole, Jos. K.; Toole, J. R.; Warren, Watson, Whitehill, Winston—40.

Absent: Brazleton, Graves, Gillette, Rickards, Webster—5.

The Chair announced the vote and declared the motion to lay on the table lost.

The President: The question now is to reconsider the motion by which Section 4 was indefinitely postponed.

Mr. Collins, of Cascade: I call for the ayes and nays.

The President: If there be no objection, the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Bickford, Burleigh, Cardwell, Carpenter, Cauby, Conrad, Cooper, Courtney, Dixon, Durfee, Gaylord, Goddard, Haskell, Hatch, Hershfield, Hobson, Joyes, Kanouse, Knowles, Kohrs, Loud, Luce, Marshall, McAdow, Middleton, Mitchell, Muth, Myers, Ramsdell, Reek, Schmidt, Toole, Jos. K.; Toole, J. R.; Warren, Whitehill, Winston—37.

Nays—Breen, Browne, Buford, Bullard, Burns, A. F.; Burns, A. J.; Burns, Edward; Callaway, Chessman, Collins, Craven, Dyer, Eaton, Fields, Gibson, Hammond, Hartman, Hickman, Hogan, Joy, Kennedy, Knippenberg, Maginnis, Marrion, Mayger, Parberry, Robinson, Rotwitt, Sargent, Stapleton, Watson, Witter, Mr. President—33.

Absent: Brazleton, Gillette, Graves, Rickards, Webster—5.

The Chair announced the vote and declared the motion to reconsider the vote carried.

Mr. Middleton, of Custer: Mr. President, I move that Section 4, Proposition No. 27, be placed on its final passage, and on that I move the previous question.

The Chair stated the motion.

Mr. Collins, of Cascade: I do not want to make any speech. I just want to make a suggestion. Three members have gone home today and one yesterday who would like to vote on this proposition and vote upon the side that I would vote upon. Now, if you can settle it now positively and forever, I am perfectly willing to do it, but I thnk a majority of the convention should settle this, and I make the suggestion that we take the vote on this proposition on Tuesday at 10 o'clock and end it one way or the other.

Mr. Middleton, of Custer: There are only five members absent, Mr. President.

Mr. Conrad, of Choteau: I will say, Mr. President, that if this proposition is lost now, I shall say no more about it, and I believe I am the originator of the proposition.

Mr. Hartman, of Gallatin: I move that the consideration of this proposition be postponed until Wednesday morning at 10 o'clock.

The President: The question now before the convention is shall the main question be now put.

Mr. Collins, of Cascade: I call for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Bickford, Breen, Bullard, Burleigh, Cardwell, Carpenter, Conrad, Cooper, Dixon, Durfee, Fields, Gaylord, Goddard, Haskell, Hatch, Hobson, Joyes, Kanouse, Knowles, Luce, Loud, Marrion, Marshall, McAdow, Middleton, Mitchell, Muth, Myers, Ramsdell, Schmidt, Toole, Jos. K.; Watson, Whitehill, Winston—35.

Nays: Aiken, Browne, Buford, Burns, A. F.; Burns, A. J.; Burns, Edward; Callaway, Cauby, Chessman, Collins, Courtney, Craven, Dyer, Eaton, Gibson, Hammond, Hartman. Hershfield, Hickman, Hogan, Joy, Kennedy, Knippenberg, Maginnis, Mayger, Parberry, Reek, Robinson, Rotwitt, Sargent, Stapleton, Toole, J. R., Warren, Witter, Mr. President—35.

Absent: Brazleton, Gillette, Graves, Rickards, Webster—5.

The Chair announced the vote and declared the motion of the previous question lost.

Mr. Eaton, of Park: I move that the further consideration of this amendment be made a special order for Thursday morning at 10 o'clock.

The motion was seconded.

The Chair stated the moton.

Mr Collins, of Cascade: I would suggest that it be postponed, instead of being made a special order.

Mr. Eaton, of Park: I accept that amendment.

The President: The question is on the postponement of the further consideration of Section 4 of Article on Revenue and Taxation until Thursday morning at 10 o'clock.

Mr. Middleton, of Custer: I move to amend by making it Tuesday.

Mr. Eaton, of Park: I have no objeciton.

The President: The question then is on the motion to postpone the further consideration of the section until Tuesday morning at 10 o'clock.

The Chair put the question on the said motion of the gentleman from Park, Mr. Eaton, and a vote being taken the same was declared carried.

Mr. Eaton, of Park: I desire to ask permission to report as the Chairman of the Committee of the Whole on Proposition No. 19.

The President: If there be no objection the report of the Chairman on Legislative Departments will be received.

Mr. Hogan of Silver Bow: I move that the convention now resolve itself into the Committee of the Wohle for the consideration of Proposition No 26, General File No. 25, on irrigation.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Hogan, and a division being called for, the same was declared lost by a vote of twenty-eight in the affirmative to thirty-four in the negative.

Mr. Hickman, of Madison: I move that the report of the Committee of the Whole be read

The President: If there be no objection the report of the Committee of the Whole on Legislative Departments will be read.

The Clerk read the said report as follows:

"Mr. President: Your Committee of the Whole have had under consideration Proposition No. 19, General File No. 18, Article on Legislative Departments, and beg leave to report the same back to the convention with the following amendments, which the committee recommend be adopted. Your committee would state that in the amendments offered reference to number of lines and sections are to such as appear in the printed bill.

Amended Section 4 by inserting after the word "fifty" on line 2 the word "five."

Amend Section 6 by striking out on lines 2 and 3 the words "Second Tuesday after" and on line 7 after the word "meet" inserting the words "at the seat of government"

Amend Section 23 by inserting after the words "bills" in line one the words "and bills for codification and general revision of the laws."

Amend Section 24 by striking out the words "present in" on lines 1 and 2, and inserting in lieu thereof the words "elected to."

Amend Section 26 by striking out the words "legalizing except as against the State, the unauthorized or invalid act of any officer" on lines 20 and 21.

Amend by adding the following to the bill as reported to be numbered Section 45.

Sec. 45. When vacancies occur in either house the Governor or the person exercising the functions of the Governor shall issue writs of election to fill the same.

Amend Section 30 by inserting the word "responsible" after the word "lowest" in line 5.

Section 34 be amended by adding thereto the words "except interest on the public debt"

Amend by adding the following as a new section to be numbered 46.

"Sec. 46. The Legislature shall provide for a State Examiner who shall be appointed by the Governor and confirmed by the Senate. His duty shall be to examine the accounts of the State Treasurers, Supreme Court Clerks, District Court Clerks and all County Treasurers, and Treasurers of such other public institutions as may be prescribed by law, and such other duties as the Legislature may prescribe. He shall report at least once a year and oftener if required to such officer as may be designated by the Legislature. His compensation shall be fixed by law."

Amend Section 26, by inserting after the word "roads" on line 11 the words "Chartering Banks, Insurance Companies, and Loan and Trust Companies."

Amend Section 17 by striking out in line 1 the words "county Judges and."

(Signed) EATON, Chairman.

Mr. Eaton of Park: I move that Proposition No. 19 as amended be placed on its final passage.

The motion was seconded.

The President: The vote should be taken upon these amendments as reported.

Mr. Collins of Cascade: I move that the rules be suspended and the amendments be adopted.

The motion was seconded.

The President: It is moved and seconded that the rules be suspended and the report of the committee be adopted.

Mr. Hogan of Silver Bow: I think it is a bad way to adopt all these amendments wholesale. I think the better way would be to adopt them separately.

The Chair put the question on the motion of the gentleman from Cascade, Mr. Collins, and a division being called for the same was declared lost by a vote of forty-one in the affirmative and twenty-three in the negative.

The President: The Clerk will read the first amendment.

The Clerk read as follows:

Amend Section 4 by inserting after the word "fifty" on line 2 the word "five."

Mr. Middleton of Custer: I move the adoption of that amendment.

The motion was seconded.

The Char stated the motion.

Mr. Warren of Silver Bow: On that motion I demand the ayes and nays.

The President: There being a sufficient number to call the ayes and nays, they will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Bickford, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J.; Burns, Edward; Callaway, Cardwell, Cauby, Collins, Conrad, Cooper, Courtney, Dixon, Durfee, Dyer, Eaton, Fields, Gaylord, Gibson, Goddard, Hammond, Hartman, Haskell, Hatch, Hershfield, Hickman, Hogan, Joy, Joyes, Kanouse, Kennedy, Knippenberg, Knowles, Kohrs, Loud, Luce, Maginnis, Marshall, Mayger, McAdow, Middleton, Mitchell, Muth, Myers, Parberry, Ramsdell, Reek, Sargent, Schmidt, Toole, Jos. K., Toole, J. R., Warren, Watson, Whitehill. Winston, Witter, Mr. President—62.

Nays: Carpenter, Chessman, Craven, Hobson, Robinson, Rotwitt, Stapleton, Marion—8.

Absent: Brazleton, Gillette, Graves, Rickards, Webster—5.

The Chair announced the vote and declared the motion to adopt the amendment carried.

The Clerk read as follows:

Amend Section 6 by striking out on lines 2 and 3 the words "Second Tuesday after," and on line seven after the word "meet" insert the words "At the seat of government."

Mr. Middleton of Custer: I move the adoption of the amendment.

The motion was seconded.

Mr. Hickman of Madison: I move to amend by inserting "temporary" before the words "seat of gevernment."

The motion was seconded.

The Chair put the question on the motion of the gentleman from Madison, Mr. Hickman, and a vote being taken the same was declared lost.

The President: The question is now on the amendment offered by the Committee of the Whole.

The Chair put the question on the said motion of the gentleman from Custer, Mr. Middleton, and a vote being taken the same was declared carried.

The Clerk read as follows:

Amend Section 23 by inserting after the word "bills" in line one of the words "and bills for codification and general revision of the laws."

Mr Bickford of Missoula: I move the adoption of the amendment.

The moton was seconded.

The Chair put the question on the motion of the gentleman from Missoula, Mr. Bickford, and a vote being taken the same was declared carried.

The Clerk read as follows:

Amend Section 24 by striking out the words "present in" on lines 1 and 2 and insert in lieu thereof the words "elected to."

Mr. Joy of Park I move the adoption of the amendment.

The motion was seconded.

Mr. J. K. Toole of Lewis & Clarke: I hope that amendment will not be adopted. It seems to me that if it is adopted it may completely tie the hands of the Legislative Assembly of this State. I can conceive, sir, where it will be possible in the event of a close Legislative Assembly, where parties are equally or closely divided, or upon any other question where there might be a division of sentiment or where the vote was closely divided, that it would be impossible to pass any kind or character of legislation if it did not meet the views of a majority of the members elected. It frequently occurs in the House of Representatives, and it is the well known method by which filibustering is engaged in, by which men sit in the presence of the speaker of the House of Representatives and decline to answer to their names when they are called by the Clerk; and if the gentleman from Deer Lodge or any other gentleman here knows any method by which he can compel a member of the Legislative Assembly to vote upon a proposition when his name is called, I have been unable to discover it It has been tried in the House of Representatives and the Senate of the United States, and so far as my information goes there is no authority discovered by which you can compel men to vote. The result of it would be that it would be in the power of some individuals—a quorum of the majority of the members who were elected—to defeat any kind of legislation. I do not believe that that should be done, and therefore hope that the amendment will be defeated

Mr Burleigh of Custer I desire to say in addition that it was found absolutely necessary during the thirty-seventh Congress, in consequence of the absence of members from the Southern States to adopt the rule which has been advocated by Mr Toole, that a majority shall constitute a quorum, and that a majority of that quorum shall be sufficient to transact legislation Now, I pretend to say here that that is the rule of Congress, it is the rule of every state in this Union, and it is the rule of the British Parliament, and were it not the rule it would be the easiest thing in the world where there is a close majority of two or three on either side for one party to prevent legislation and defeat the will of the legislature. Now, I will read from Bartley's Digest, which is considered authority upon parliamentary law, for the information of the convention.

(The gentleman here read from Barclay's Digest)

Now I say here at least that it is in the hands of one party in Congress in the absence of two or three of its members, or in the hands of two or three members of the Legislative body to obstruct the wheels of legislation and defeat the will of the people altogether. I hope this amendment will not prevail It is not right, and while it is put in there with the best motives, I think if the gentleman had looked back to the history of the causes which influenced Congress to adopt it, I do not think he would have introduced the motion.

Mr. Winston of Deer Lodge: I desire to say that every state in the United States has not the provision as it is in the printed bill as suggested by the gentleman from Custer. There are a good many of the states that have adopted the method which I propose. There was a good deal of discussion on this point when the constitution of California was adopted. I think it will very often happen that men will refuse to vote. You can compel the attendance of them, and they can vote as they choose; but if we allow a majority of a quorum to pass a bill, a quorum would be a majority, and a majority of that quorum would be about one-fourth of the members. Members will be taken away from the house upon some pretext or other and you can pass a bill by one-fourth of the members, and I do not think it is right, notwithstanding what the gentleman from Lewis & Clarke County has said. There is no danger in my opinion. It seems to me that there is too much legislation, and certainly if a bill has any merit in it, why you can get a majority of the members of the house for it. I am therefore in favor of the amendment.

Mr. Maginnis of Lewis & Clarke: I just wish to add a word to what has been said by the gentleman from Lewis & Clarke in favor of following the beaten track in this matter. As he says two or three members could break up a legislature in almost any case where there was a close question about a matter, and members by refusing to vote could break a quorum. I do not see how the difficulty that my friend from Deer Lodge speaks of can ever occur. Suppose there is but a few over a quorum in the house at any time, you can always have a call of the house and compel the attendance of absent members. There is nothing more clearly manifest in parliamentary practice than the way inwhich a minority can defeat hasty action on a bill, and I have seen the chairman of the House of Representatives sit for fifty-six hours in his chair because members refused to vote, and there was no way of compelling them to vote.

Mr. Knowles, of Silver Bow: I think we can see a practical example of that right here in this convention today upon this water question. Now there has been a close vote two or three times upon that. There are two or three members absent; some are excused bcause they are sick; one because his family is sick; and it is impossible to tell how those gentlemen would vote if they were here, on these propositions, and it would stop the passing of the bill. It puts a kind of practical veto upon it. There are men away from this convention today in good faith—two that we know of—and it would put a kind of stop to legislation. Now, the gentleman says we have too much legislation, but the world has gone on without this provision; legislative bodies have existed for centuries without any such provision as this, and there is no great harm in it and no great demand that I have heard, for any such provision.

Mr. Maginnis of Lewis & Clarke: A small party of men might defeat the most important appropriation bill and so compel an extra session, if they had any scheme.

Mr. Winston of Deer Lodge: I would call the attention of the gentleman to the different states that have this provision. Illinois and West Virginia and several other states all have this provision, and I don't see why we should not. This is no new thing. It is one of the most important steps in the constitution, and I still maintain that it is a good thing and I hope that the amendment will prevail.

Mr. Collins of Cascade: I believe that the rule that a majority of all elected shall vote before a bill is passed is a good one, and I thnk it would be more particularly good in a Legislative Assembly in a state like Montana which will not have a large legislature—a great number of members. It is almost impossible to compel the attendance of members. If they move the call of the house some one will almost immediately move that it be suspended and that will end it. If members refuse to vote, they can refuse to vote when a majority of those present is required, but I believe it will be in the best interest of legislation in Montana that this motion of the gentleman from Deer Lodge be adopted, and that that be the rule in our legislature when we become a state. There can certainly be no harm in it, and we can all see where there can be a great deal of good in it. It is not like an unwieldy legislative body of four or five hundred men where every law should receive a majority of all the electors elected.

The Chair put the question on the adoption of the amendment reported by the committee, and a division being called for the same was declared lost by a vote of twenty in the affirmative to forty in the negative.

The President: This leaves the action as in the printed copy.

The Clerk read as follows:

Amend Section 26 by striking out the words "legalizing except as against the state the unauthorized or invalid act of any officer' on lines 20 and 21.

Mr. Hartman of Gallatin: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Gallatin, Mr. Hartman, and a vote being taken the same was declared carried.

The Clerk read as follows:

Amend by adding the following to the bill as reported, to be numbered Section 45.

Sec. 45. When vacancies occur in either house the Governor or persons exercising the functions of the Governor shall issue writs of election to fill the same.

Mr. Hartman, of Gallatin: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Gallatin, Mr. Hartman, and a vote being taken the same was declared carried.

The Clerk reod as follows:

Amend Section 30 by inserting the word "responsible" after the word "lowest" in line 5.

Mr. Burleigh, of Custer: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer, Mr. Burleigh, and a vote being taken the same was declared carried.

The Clerk read as follows:

Sec. 34 be amended by adding thereto the words "except interest on the public debt."

Mr. Hartman, of Gallatin: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Gallatin, Mr. Hartman, and a vote being taken the same was declared carried.

The Clerk read as follows:

Amend by adding the following as a new section to be numbered Sec. 46.

Sec. 46. The Legislature shall provide for a State Examiner, who shall be appointed by the Governor and confirmed by the Senate. His duty shall be to examine the accounts of the State Treasurer, Supreme Court Clerks, District Court Clerks, and all County Treasurers, and Treasurers of such other public institutions as may be prescribed by law, and such other duties as the Legislature may prescribe. He shall report at least once a year and oftener if required, to such officer as may be designated by the Legislature. His compensation shall be fixed by law.

Mr. Burleigh, of Custer: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer, Mr. Burleigh, and a vote being taken the same was declared carried.

The Clerk read as follows:

Amend Section 26 by inserting after the word "roads" on line 11 the words "chartering banks, insurance companies and loan and trust companies."

Mr. Loud, of Custer: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer, Mr. Loud, and a vote being taken the same was declared carried.

The Clerk read as follows:

Amend Sec. 17 by striking out in line one the words "County Judges and."

Mr. Kennedy, of Missoula: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Missoula, Mr, Kennedy, and a vote being taken the same was declared carried.

The President: This disposes of all the amendments reported by the Committee of the Whole.

Mr. Burleigh, of Custer: I move, Mr. President, the adoption of Proposition No. 19 as amended as a part of the constitution of the State of Montana.

The President: There is an amendment offered by the gentleman from Deer Lodge. The question is upon the adoption of the amendment offered by the gentleman from Deer Lodge which the Clerk will read.

The Clerk read as follows:

Amend Section 4 by striking out the word "sixteen" in line 2 and inserting in lieu thereof "twenty-one".

The motion was seconded.

The Choir stated the motion.

Mr. Craven, of Lewis & Clarke: I call for the ayes and nays.

Mr. J. K. Toole, of Lewis & Clarke: I offer an amendment to that.

The President: The gentleman from Lewis & Clarke offers an amendment to strike out the word "sixteen" on line two and insert in lieu thereof the words "twenty-six", and also another amendment to strike out the words "no more" on line 4 and insert "at least," so that it shall read "there shall be at least one senator from each county." Will the gentleman from Deer Lodge accept the amendment of the gentleman from Lewis & Clarke?

Mr. Robinson, of Deer Lodge: Yes sir, I accept the amendment with regard to the number of Senators, but not with regard to the other part of the amendment.

The President: The question now is on the adoption of the amendment.

Mr. J. K. Toole, of Lewis & Clorke: When this matter came up in the Committee of the Whole I was inclined to say nothing in reference to it, because I was desirous of knowing what action the Committee on Apportionment and Representation would take. I had supposed all along that the number of Senators and the number of Representatives which should comprise the Legislative Assembly of the State of Montana would be very material, and necessarily material to the Committee on Apportionment in arriving at a proper apportionment of the Territory—in other words, that that fact must be first settled before anything further could be done. Now, Section 4 provides that there should be sixteen members of the Senate—that there shall be one for each county and no more. I am desirous, so far as I am concerned, and I am confident I reflect the opinion of my constituency, that the representation which is provided for in this section is inherently wrong and inequitable and does not meet the requirements of the provisions of the constitution of the United States which guarantees to every state in this Union a republican form of government. Why, the counties in the State of Montana, whether they contain two hundred inhabitants or two hundred thousand inhabitants, are all placed on the same and an equal footing. What I understand to be meant by a republican form of government is a government where sovereignty is confided to and immediately exercised by the popular will. Will it be contended that in any spirit, that by any rule of fairness, the county of Dawson, which my good friend Mr. Haskell honorably and ably represents upon this floor, with its four hundred voting population will be entitled to the same representation in the Legislative Assembly of this state as the great county of Silver Bow, the great county of Deer Lodge, the great county of Missoula, which is increasing in population and material prosperity and wealth greater than any county in the State of Montana today?—saying nothing about the counties of Lewis & Clarke and Jefferson What will be said, Mr. President, with reference to this kind and character of representation apportioned first? Will my constituency submit to it? Will the constituency of the representatives of Deer Lodge Couny submit to it? Will the constituency of these gentlemen from Silver Bow and Missoula and Jefferson lie supinely by and yield submission to such treatment as this? For myself, sir, I say that the people of the county of Lewis & Clarke would not. This is no temporary argument. Are you going to yield up the matter of representation which has been accorded to us upon the principles and theory which have obtained since the organization of this Territory? Are you going to abdicate, I say, our rights and accept this new departure? I repeat, this is no temporary arrangement. We say that the first Legislative Assembly shall consist of this number. If this provision is put into this constitution, this same representation will continue indefinitely and forever, because the sixteen members who go to the first Legislative Assembly and comprise the Senate, that body in conjunction with the House provides for the apportionment of the State of Montana at the next Legislative Assembly; and so this inequality which commences at the meeting of the first Legislative Assembly of the State of Montana will be preserved for all time to come and until an amendment is made to the constitution of the State of Montana. What right, what excuse can any gentleman offer for this upon this floor? Does not he know that he violates every provision, every theory, that has been inaugurated and maintained in this Territory since its organization? I believe that two states in the Union—I have been so informed—have made this departure with reference to their apportionment and their representation. I do not know whether this is true or not, but if it be, I apprehend that long ere this they have discovered a prolific course of evils in it. With this system there would be the grossest sort of imperfection. What can you urge in favor of a county on this question that can be urged in favor of the Senate of the United States, for instance—I would point to that as an example—that the Senate of the United States has but two senators from each State in the Union, and that they were created without reference to the population. that is true, but everyone knows how that came about It was not by reason of any justice or equality in the matter but it was the result of a compromise which brought about the representation of the States. What sovereignty, if you please, has a county have sovereign representation—that sort of representation which a state has in the United States? What principles of sovereignty does it exercise? Simple functions in the matter of regulation of the finances of the county and a rate of taxation, and in looking after the regulations of local government. So that so far as that is concerned there is no argument in favor of it. Why, I would accord to every citizen of Dawson County the same right that I do to the people of Lewis & Clarke and Silver Bow. I say that it is establishing a principle here in this constitution which is unjust and unequal and the people of this State would not sanction it. It has everywhere been maintained and upheld as a correct principle of government that majorities should rule, and that the right of representation should be with reference to numbers. The constitution of the United States in providing upon the question of representation says with reference to the representation in the House of Representatives, which is the best method adopted by which we can get at the question of represntation, that it shall be done with direct reference to the number of people, leaving out Indians that are not taxed. I simply make this appeal to gentlemen representing counties that represent the wealth, that represent the manufacturing interests, that represent the commercial interests and the mining interests of this Territory, can they afford to sit silently by and see this matter of representation wrested from them and placed in the hands and power of those who do not proximate them in numbers? Why, a man in Lewis & Clarke County, under our theory of government, or a man in Deer Lodge, or Silver Bow, or Missoula County is entitled to exactly the representation in proportion to his number as the man in Dawson, in Yellowstone or in Custer counties. There is no inequality about this. But we go farther than that. In order to secure the counties representing the smaller numbers of population, we accord to them by the amendment which I have offered at least one representation in the Senate of the State; so that so far as their local affairs are concerned, we have not put them in a situation by which they do not have some one to reflect the views of their constituency or that they have to divide up with some other constituency, but we say that they shall have at least one representative—one Senator, and that the rest shall be made in proportion so far as population is concerned. As I have said before, if this was a temporary arrangement it might be different, but every member present can see that if this is inaugurated, at the first session of the Legislative Assembly, it will be perpetuated for all time to come, for the simple reason that the first Legislative Assembly makes the apportionment for the second, and the second for the third, and therefore this inequality will continue indefinitely. Can the great county of Missoula with all of its invitations which it is extending to settlers to settle upon its public domain—can this county, building up with railroads, inviting settlers, and with the degree of prosperity before it that it has—can it afford, as well as the counties of Lewis & Clarke and Silver Bow and Deer Lodge and Jefferson, to tie its hands and give away the power which it has and ought to have in proportion to its population, and put itself upon an equality with counties that do not represent anything like the same amount of population? It seems to me that the statement of the proposition is enough to set gentlemen to reflect upon the question and to remember that this is not the end of it. If it can subserve any purpose, whether ulterior or otherwise—whatever its purpose may be—we must remember and reflect that there are other and greeater considerations behind it, and that it will last for all time to come. I simply make this suggestion.

Mr. Fields, of Park: It would be preposterous for me to attempt to answer the eloquence of the gentleman from Lewis & Clarke, but I am here to take my stand in behalf of the people of the county that I represent. I do not believe that this is a party measure or anything of that kind, and I don't think that the claim of population and wealth has got anything to do with the representatives of our State Senate. I believe that Park County and Dawson County, with their smaller amount of population, have got the same right of representation in the Senate of the State of Montana as Montana claims with her two Senators in the United States against the great State of New York. I do not believe that the question of wealth should be taken into consideration, or the question of population either. I believe in the increase of representation in the House of Representatives, and will concede that they should be granted representation in proportion to their population. Lewis & Clarke, Silver Bow, Deer Lodge and Missoula, as it is claimed, have got the greatest population. If the people in those outside small counties concede to those counties the right of representation in the Senate in the ratio of the population they possess, it will deprive these other counties from any voice whatever in that Senate, except to resort to the right of petition, and I will guarantee that the people of those outside counties, Dawson, Yellowstone, Park and the others, with the right of petition that will be granted, when the interests of those counties are involved or questions brought up that would bear against the interests of those counties, that a petition would not amount in value to the paper it was written on. In behalf of the constituency that elected me to come here and represent them, I will stand and hold that we have equal representation in every county in the State of Montana in the Senate; and as far as the representation is concerned in the lower house I am willing and ready to concede that they shall have representation according to the ratio of population they have in each county.

Mr. Joy, of Park: This is a question that I am very much interested in. Now, the gentleman from Lewis & Clarke County has stated that there were but two States in this Union, as far as he knew, where any such monstrous proposition was ever known to prevail. I want at the outset to call the attention of this convention to the fact that when the State constitutions were arranged and adopted in these States, this provision was incorporated therein, that each county was entitled to one Senator and no more; in the State of Alabama each county was entitled to one senator and no more, and it is to this day. In the State of Connecticut one senator from each county: in the State of Delaware three senators from each county—which shows that it was on the basis that representation should be equally distributed among counties. In the State of Georgia, one Senator from each county; in the State of Indiana, the clause in the constitution says not more than one Senator from each county; in the State of Kentucky, one Senator from each county; in the State of Louisiana, the same; in the State of Maryland, one Senator from each county; in the State of New Hampshire, there are twelve Senators to this day; in the State of New Jersey, one Senator from each county; in the State of North Carolina, one senator from each county; South Carolina, one Senator from each county. I will state, though, that when the constitutions were adopted in the States of North and South Carolina, this provision was not incorporated, but at the constitutional convention of 1878 when the States of North and South Carolina formed a new constitution and adopted that provision, it was in each of those constitutions, and it has been there since 1878.

Mr. J. K. Toole, of Lewis & Clarke: You have stated that there is one Senator from each county. Does the constitution of each State which you have mentioned provide that there should be one Senator for each county and no more?

Mr. Joy, of Park: That is what it provides; which shows, I say—this particular proposition shows that after those States of North and South Carolina had lived under their government for many years they concluded there was something wrong there, and when they framed their new constitution for some reason or other—and I would like the gentleman to explain the theory why it was done; there is nothing in the proposition that the gentleman from Lewis & Clarke states, that it was for the same reason that the United States constitution was formed—but after they had lived under these constitutions for these seventy-five or one hundred years they finally concluded that it was all wrong; that each county ought to have an equal representation in one house of their Legislature, and in framing their constitution they adopted provision, and such is the constitution today of the States of North and South Carolina The State of Vermont has a similar provision in her constitution, one Senator from each county, making, instead of two States which the gentleman speaks of, thirteen States in this Union today which are living under that form of constitution, and of which you hear no complaint. I say, gentlemen, that we are asking this in that spirit of fairness which animates the American people. It is a mistake that the gentleman makes when he says that this was formed simply under circumstances and exigencies which forced upon them the provision of allowing two Senators to each of the thirteen colonies. I say that history won't bear him out in that statement. The constitution of the United States was adopted with the broad provision not only that these thirteen colonies, who would not come in under other circumstances, but that each and every state that might become a part of the constitution hereafter, even reaching down to the time that Montana should be admitted one hundred years after—it made that broad provision on the broad basis of equity and justice, that each State of the Union should have equal representation in the Senate of the United States. It was on that broad liberal platform. It was the only way in the world in which some of these States could get equal representation. And I want to say, Mr. President, as has already been said by my colleague, and as is well known, that Lewis & Clarke and Silver Bow Counties alone, or possibly including Deer Lodge County, have controlled every body that has met here for some years; that they have a majority in each house of the Legislature by virtue of their population; that they have a majority in convention, except, fortunately, they do not have it in this body—that very fact alone is enough to warn all of the counties outside of those three that they will practically never have a voice in the halls of either house of our Legislature; or they will have a voice there, but it will be soundless; it won't amount to anything; the majority of the votes will be cast in those three counties, and, however the other counties may protest, nevertheless those three counties will make the laws for the State of Montana, and the rest of these counties will have to live under them. Now, a great deal has been said about the government being formed by the consent of the governed—that that was the basis of republics; and I say that these three counties will control for all time both branches of the Legislature of Montana. It could hardly be presumed, and I won't undertake to advance the assertion, that Lewis & Clarke County and Silver Bow County will not grow in proportion to the balance of the State of Montana, and I say that we have no assurance that these conditions will ever be changed; and although I believe Park County to be one of the most prosperous counties in the State and one of the most growing counties in the State at this time, by virtue of her mines and machine shops and other interests, and promises to become one of the greatest counties in the State of Montana, and aside from that fact that she is at the present time four or five times as large as some of the other counties spoken of, yet by reason of that I do not ask any advantage over other counties. Something has been said about Dawson County. I say to you, Mr. President, that there are five or six counties in this Territory smaller by far than Park County, and we are willing to say to each one of those smaller counties, you shall have the same representation in the Senate of the State as Park County has, and we say that only in the same spirit of fairness and equity that we ask that our county have the same representation in that house as the other counties have. I say it is customary and it is fair and right and proper that we should at least have a check and something to say about the legislation that is to take place in the years to come in the State of Montana. Now, again, one reason particularly is in regard to the public buildings. Suppose a Legislature meets here composed of a majority in each county, how many public buildings do you suppose Dawson County will get? How many public buildings will Park County or Gallatin County or any other of these counties get? How much consideration will ever be shown them in any of the legislation that may take place? I do not want to take up the time of the Legislature. I have spoken longer than I expected, but I say that if this constitution is to be framed in favor of all the people of the State, so that we may dwell together in harmony and friendship in one common family, that there will be no grievances offered at the Legislature at any other point or place that we of the counties would not rush in to rectify it. I say, Mr. President, we are entitled to one Senator from each county and no more. Let the lower house be apportioned according to the voting population, and no complaint will be heard from any of the other outside counties. Finally, in that same spirit of fairness, I believe that the gentleman of this convention will adopt that provision as we have adopted it in the Committee of the Whole.

Mr. Burleigh, of Custer: I move that the convention take a recess until eight o'clock this evening.

The motion was seconded.

Mr. Chessman, of Lewis & Clarke: I move to amend by moving that we adjourn.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, Mr. Chessman, and a division being called for the same was declared lost by a vote of thirty-four in the affirmative to thirty-five in the negative.

The President: The question now is upon the motion of the gentleman from Custer, Mr. Burleigh, to take a recess.

Mr. Maginnis, of Lewis & Clarke, called for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered in the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Bickford, Breen, Browne, Buford, Bullard, Burleigh, Burns, Edward; Cauby, Collins, Cooper, Dyer, Eaton, Fields, Gibson, Goddard, Hammond, Hartman, Haskell, Hickman, Hobson, Joy, Kennedy, Knippenberg, Loud, Luce, Marrion, Marshall, Middleton, Mitchell, Parberry, Ramsdell, Rotwitt, Watson, Whitehill, Witter—35.

Nays: Aiken, Burns, A. F.; Burns, A. J.; Callaway, Carpenter, Cardwell, Chessman, Conrad, Courtney, Craven, Dixon, Durfee, Gaylord, Gillette, Hershfield, Hogan, Joyes, Kanouse, Knowles, Kohrs, Maginnis, Mayger, McAdow, Muth, Myers, Reek, Robinson, Sargent, Schmidt, Stapleton, Toole, Jos. K, Toole, J. R., Warren, Winston, Mr. President—35.

Absent: Brazleton, Hatch, Graves, Rickards, Webster—5.

The Chair announced the vote and declared the motion of the gentleman from Custer, Mr. Burleigh, lost.

Mr. Aiken, of Silver Bow: I desire leave of absence until Monday.

The President: If there be no objection the gentleman will be excused.

Mr. Craven, of Lewis & Clarke: I move the convention do now adjourn.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, Mr. Craven, and a vote being taken the same was declared carried.

The convention stood adjourned until August 3, 1889, at 10 A. M.

TWENTY-FIFTH DAY.

Saturday, August 3, 1889. Morning Session.

The convention was called to order by the President at 10 A. M.

The Clerk called the roll.

The Chaplain offered prayer.

The Clerk read the journal of the previous day.

Mr. Dixon, of Silver Bow: I have a report here from the Judiciary Committee.

Mr. Robinson, of Deer Lodge: I desire to submit report of the Committee on Ordinances.

The Clerk read as follows:

"Mr. President. Your committee on Judiciary, to whom was referred the resolution herewith returned relating to Indian reservations, have directed me to report that they have considered the same and are of opinion that this convention has no authority under the Enabling Act or the laws of Congress to take any action in the matter, and your committee recommend that no action be taken.

August 3, 1889. (Signed) DIXON, Chairman."

The President: If there be no objection to the adoption of this report it will be adopted.

The Clerk read as follows:

"Mr. President: Your Committee on Judiciary, to whom was referred the letter of Brigadier General Ruger of date July 25, 1889, and also Resolution No 28 relating to military reservations in Montana, have directed me to report that they have considered the matter and recommend the adoption by the convention of the article herewith submitted as one of the articles of the proposed constitution.

August 3, 1889 (Signed) DIXON, Chairman."

This report will be ordered printed and placed upon file for consideration. The Clerk will now read the report of the Committee on Ordinances.

The Clerk read as follows:

"Mr. President: Your Committee on Ordinances beg leave to submit the following report.

(Signed) ROBINSON, Chairman.

"ORDINANCES.

"Be It Ordained:

"First, that an election shall be held throughout the State of Montana on the first Tuesday of October, for the ratification or rejection of the constitution framed and adopted by this convention.

"Second, at said election the constitution framed and adopted by this convention shall be submitted to the people of the State for their ratification or rejection, and all persons who are then qualified electors under the laws of this Territory shall be qualified to vote for the ratification or rejection thereof.

"Third, said elections shall be held at the several places in the several wards and precincts throughout the Territory appointed for the holding of elections under the laws of this Territory, and shall be conducted in the manner prescribed by the laws of this Territory regulating elections. The Board of County Commissioners of the several counties of this Territory shall appoint judges and clerks of such election in each of said wards and precincts in the same manner as is now required by law for the appointment of judges and clerks of general elections in this Territory.

"Fourth, each elector voting at said election shall have written or printed upon the ticket he may deposit in the ballot box the words 'For the constitution', or 'Against the constitution', or other equivalent words.

"Fifth, the votes cast at said election for the adoption or rejection of said constitution shall be canvassed not later than fifteen days after said election, or sooner, if the returns from all of the precincts shall have been received and in the manner prescribed by the laws of the Territory of Montana for canvassing the votes at general elections in said Territory, and the returns of said election shall be made to the Secretary of the Territory; and the Governor, the Secretary, Auditor and Attorney General of the Territory and the President of this convention, or a majority of them shall constitute a Board of Canvassers, who shall meet at the offices of the Secretary of the Territory on the thirtieth day after the election and canvass the votes so cast and declare the result.

"Sixth, that on the first Tuesday in October there shall be elected by the qualified electors of Montana, a Governor, a Lieutenant-Governor, a Secretary of State, an Attorney General, a State Treasurer, a State Auditor, a Superintendent of Public Instruction, one Chief Justice and two Associate Justices of the Supreme Court, a Judge for each of the Judicial Districts established by this constitution, a Clerk of the Supreme Court and a clrek of the District Court for each of the Judicial Districts established by this constitution

"Seventh, that notice of such election for State, County and Township officers shall be given by the several boards of County Commissioners in the same manner as notices of general elections for delegate to Congress and county officers under the now existing laws of the Territory and such election shall be conducted and held and the votes canvassed in the same manner as provided by law for territorial officers, and all state, county and township officers shall qualify and enter upon the discharge of their duties as such on the first Monday of January following such election.

"Eighth, that perfect toleration of religious sentiment shall be secured and that no inhabitant of the State of Montana shall ever be molested in person or property on account of his or her mode of religious worship.

"Ninth, that the people inhabiting said State of Montana do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States, that the lands belonging to citizens of the United States residing without the said State of Montana shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the said State of Montana on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein contained shall preclude the said State of Montana from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation, but said last named lands shall be exempt from taxation by said State of Montana so long and to such extent as such act of Congress may prescribe.

"Tenth, that the debts and liabilities of said Territory of Montana shall be assumed and paid by the said State of Montana.

"Eleventh, that provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said State of Montana, and free from sectarian control.

"Twelfth, that this ordinance shall be irrevocable without the consent of the United States and the people of said State of Montaana."

The reading of the above report was dispensed with and the same was referred to the Committee on Printing to be printed.

Mr Marshall, of Missoula, sent up a proposition relating to public lands.

The President: The gentleman from Missoula offers a proposition relating to public lands which will be read by the Clerk.

"Article .... Public Lands.

"Section 1. The lands granted to Montana by the act of Congress, approved February 22, 1889, entitled 'An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the Union on an equal footing with the original States and to make donations of public lands to such states for the support of common schools or which may hereafter be granted for that purpose, shall be classified by the Board of Land Commissioners as follows: 1st, Lands which are valuable only for grazing purposes. 2nd. Those which are principally valuable for the timber that is on them. 3rd, Agricultural lands. 4th, Lands within the corporate limits of any incorporated town or city or within a mile of such limits, and which are worth more than Fifty Dollars ($50) per acre.'

"Sec. 2. The lands of the first of said classes shall not be sold, but shall be leased, under such rules and regulations as may be prescribed by law. The lands of the second class may be sold or the timber thereon may be sold, under such rules and regulations as may be prescribed by law. The Agricultural lands may be either sold or leased, under such rules and regulations as may be prescribed by law. The lands of the Fourth class shall be sold in lots of not more than five acres each, and not more than one-half of any one tract of such lands shall be sold prior to the year 1895.

"Sec. 3. None of the lands granted for common schools shall be sold for less than ten dollars ($10.00) per acre, and no lease of such lands shall be for a longer term than five (5) years, unless the Congress shall amend the act referred to in Section 1 of this article so as to permit longer leases.

"Sec. 4. All other public lands may be disposed of in such manner as may be provided by law."

The President: This properly belongs to Committee No. 20, on Public Lands. If there be no objection it will be so referred.

Mr. Bickford, of Missoula: I move you, sir, that the proposition be considered in connection with Proposition No. 23 when the same comes up.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Missoula, Mr. Bickford, and a vote being taken the same was declared carried.

Mr. Bickford, of Missoula: I desire to offer a substitute for Section 1, Proposition No. 23.

The President: The proposition offered by the gentleman from Missoula, Mr. Bickford, will be read by the Clerk.

The Clerk read as follows:

"Section 1. All the public lands of the State are held in trust for all the people; and none of such lands nor any estate or interest therein shall ever be disposed of, except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the State; nor shall any lands which the State holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States."

Mr. Bickford, of Missoula: I move that the proposition as read be referred to the printing committee with orders to print it and place it on General File for consideration with Proposition No. 23 on Public Lands and Exemptions.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Missoula, Mr. Bickford, and a vote being taken the same was declared carried.

The President: The convention had under consideration an amendment offered by the gentleman from Deer Lodge, which was amended, and the amendment accepted by the gentleman from Lewis & Clarke. The proposition under consideration was No. 19, Section 4, line 2. The gentleman from Deer Lodge moved to strike out "sixteen" and insert "twenty-one". This was amended by a motion to strike out "sixteen" and insert "twenty-six". This matter was the subject of consideration upon the adjournment of the convention.

Mr. Middleton, of Custer: I consider this a matter of a good deal of importance, not only to the county that I represent, but to all of the counties of this Territory or State, perhaps with the exception of two or three. The gentleman from Lewis & Clarke proposed an amendment whereby the number of Senators will be extended or increased from sixteen to twenty-six. The report of this committee that had in charge Proposition No. 19, lays down the proposition, in other words, the principle that each county shall have an equal representation in one house of the Legislature, and that the other house shall be based upon population. Now, I believe, although as the gentleman says, that committee was not unanimous on that proposition—I believe that the report of the committee and the principle that that report asserts is correct. We heard a great deal in the eloquence and oratory of the gentleman from Lewis & Clarke as to republican form of government and popular representation. I believe the gentleman knows that twelve or thirteen counties of this Territory for the past twenty-five years have practically stood in a position where all they had in the Legislature was the bare right of petition; that they had to come here and kneel down with their hands raised towards heaven, beg for anything and everything they got; and I believe if it were in the power of the people of Lewis & Clarke County—and I don't know that that might not be true of the county that you, Mr. President, represent—they would place a Chinese wall around these counties and make the counties of the rest of the State build it and pay for it, and put a barb wire fence on top of it, and within that Chinese wall they would build all the institutions that the State of Montana would have, and if they could they would make the rest of the counties pay for them. I do not blame the gentleman from Lewis & Clarke for what he said; and I do not blame the gentleman for the attitude that he assumes here. He represents a people so absolutely selfish that he is bound on this floor to take the position that he does, regardless of what his conscience may dictate to him; regardless of what he may think is right and fair; and in view of his position it must be confessed that he made an eloquent and oratorical effort. Much more, perhaps than any representative from any of the smaller counties of this territory can make. Now it was shown here by a reference to the history of other states that at least twelve or perhaps fourteen of the States of the Union have this identical provision in their constitutions—that is, that one house, the upper house of the Legislature, shall be composed of an equal representation from each of the counties. Now, why would that be desired? Take it in a territory like this. Take the three large counties if you will—and the gentleman undertook to curry with a great deal of palaver the fourth county, that of Missoula—and I am here to say that Missoula county is represented here and is able to take care of her own interests; for herself, and I do not believe that Missoula county is demanding anything like what the gentleman asserted. But to go back and ask what is the reason or purpose, or why should any county demand that it stand on an equal footing with other counties regardless of population? It is, that in one house of the legislature it may have some kind of chance upon the popular will. If the city of Helena or the city of Butte had one hundred thousand population, upon the theory and argument of the gentleman from Lewis & Clarke, it would rule the State of Montana today. Now, in principle, is that right? Lewis & Clarke has to some extent diversified industries and interests, but principally its main industry is mining. As to Silver Bow County that is true; as to Deer Lodge County it is also true, although they have in connection with that more or less agriculture. Now, the other counties of the territory, nature has not to so great an extent smiled upon. Some of them are engaged principally in stock raising: others principally and almost entirely in agriculture. The interests of these different counties are different. The mining sections demand certain classes of legislation; the agricultural sections require other kinds of legislation; the stock interests require legislation to some extent in their interest. Place the entire matter of both houses of this legislature upon a basis of popular representation and, Mr. President, you know that the mining interests and the mining localities and sections of this state will forever dictate to the rest of the state and to the other industries and interests, what legislation they shall have and what they shall not, and I submit that that is absolutely unfair. I submit that there should be in one house of the Legislature a representation based upon the counties; so that although the population house might desire to have everything in the interest of the mining localities, that house could say to them "gentlemen you cannot have things your way entirely without conceding something to us." And, Mr. President, it was with this matter in view that I moved yesterday to strike out Section 41 of this bill that makes it bribery, or solicitation and bribery in a man in the legislature to go to one member and say "you vote for my proposition and I'll vote for yours." I say that was, for twenty-five years, the only way that any small county in this Territory could get any legislation, by doing that very thing. I say that was the only way it was possible for the stock interests, or farming interests of this Territory last winter to get a bounty law passed was by saying, "We will stand in with your Boiler Inspector Bill or anything you want, if you will give us a bounty law." I agreed with the gentleman who voted against me when I moved to strike that thing out, and if we were to continue in the same position I believe that that section ought to be stricken out. If the outside counties—the smaller counties of this Territory are going to have but the bare right of petition, I think they ought to be permitted to come here and beg, and if they have a nominal representative here, he is always, and always will be, in the minority, that the representative might be permitted to say where there happened to be a division in Silver Bow County, Lewis & Clarke County, by siding with one or the other "I will do this if you will do that." That was my reason for moving to strike that section out, for although this motion to move to amend the number of senators from sixteen to twenty-six was not raised in the Committee of the Whole, I knew it was coming; I knew that the people of Lewis & Clarke county demanded it of their representatives on this floor. I was not certain but what the representatives of your own county, Mr. President, demanded it, although I was not so clear upon that point, but as to this county, I was perfectly satisfied that they would take the earth if they could get it. Now the gentleman asserted yesterday that a county is not a sovereignty in any sense of the word, that it does not stand on an equal footing as compared with the relation of a state to the National Government—undertaking to forestall the argument that he anticipated might be made, that the several states of this Union had in the upper house of the Congress of the United States an equal representation—undertaking to forestall any argument that might be made on the theory that Montana, if she shall become a state, would go into the Congress of the United States, and in the senate; have an equal voice and an equal vote with the State of New York. Now, I submit that that argument in that respect is not correct—and that a county is a sovereignty. It has an individual existence; it can sue and be sued; it can and is placed in a position to acquire property and hold it in the name of the county, it has to build and own courthouses, jails and all that sort of thing; it has to provide for the levying and collection of taxes, for the payment of its debts, for the payment of judgments that are brought into court and sued, and it has obligations in the shape of bonds of a market value in the markets of the world. Will it be contended that it has no existence, that it has nothing in the shape of a sovereignty? I submit that so far as a county's relations to a state are concerned, it stands relatively and identically in the same position that a state does to the government of the United States, and that there is every reason and every argument to be used in favor of each county having the same consideration and the same representation in one house of the Legislature that a state has in the legislature of the nation. Now, why does the gentleman from Silver Bow demand this increase of the number of senators? Why does this gentleman from Deer Lodge County accept his amendment —a man who has been posing as an economist; a man who has been here here opposing everything in the shape of the expenditure of a dollar that could possibly be avoided, and he accepts the amendment to increase the number of senators from sixteen to twenty-six. Why does he do it? Simply because he came here as the representative of Deer Lodge County, one of the counties in this trio that represents the wealth, and we will concede, the vote of the State of Montana; and the argument that is used as to these three counties representing population by basing it upon the count of the vote is misleading, for this reason: you take it in the mining districts and the ration of population is calculated by the number of votes polled would be perhaps one to one and a half or one to two, while the ratio of population in the farming counties, or even in the stock counties, where nearly every voter is a man of family, some of them with five or six or ten children, and the basis of population there as compared with the vote would be about one to five or six. So, that arriving at the population by reason of the number of votes polled in these different counties constituted as they are, is not a fair basis upon which to calculate Many of these counties that today have a comparatively small population are as large in the extent of territory as the whole three counties of Lewis & Clarke, Silver Bow and Deer Lodge The indications are that within a very few years the development of those counties will bring them where their population will be equal perhaps to that of most any other county in the state, and as the gentleman from Park said, although he represents a county whose vote is three or four or five times larger than some of the other counties, his people are willing to come into the upper house of the legislature and stand upon an equal footing with the people in every other county, and I submit that it is the only way that it is possible for twelve or thirteen counties in this state to ever procure any reasonable kind of legislation unless it should please the honorable gentlemen who happen to represent these three counties that I have mentioned. I believe that when we become a state these smaller counties—I say "smaller" because I speak of them by reason of their population, for all of them nearly, outside of these three, are large in territory—those counties have struggled, some of them for fifteen, some of them for ten, some not for quite so many years. Their conditions, circumstances and surroundings have not been as favorable as they have been in these counties where the bowels of the earth have yielded gold and silver and lead; But the people in those counties have struggled just as hard They have interests and industries that are entitled to consideration They should be able to go into the halls of the legislature of this state and stand at least in one house upon an equal footing with any other county; and for that reason it seems to me that it is absolutely unfair—it is absolutely selfish—it is, if I may be permitted to use the expression—it is hoggish, to demand of us anything else, or to say to us "Lewis & Clarke County shall have eight or ten representatives and you shall have one"; that "Silver Bow County shall have ten or twelve representatives to your one"; and "that the ratio of representation shall be the same in both houses, and if there is anything you want you can come and beg for it, and if we like we will give it to you, and if we do not you can go and whistle." Mr. President, I think that the proposed section four should stand as it is, and that the people of this territory undoubtedly when it comes to be submitted to them for their consideration and adoption or rejection will say—I do not know but persons might be found in Lewis & Clarke County who would say it is fair—but I do know, however, that outside of Lewis & Clarke County that a majority and a large majority in every county will say "gentlemen that is fair; I am glad you put that into the constitution: it is right." And I do not believe that the people of the State of Montana, if it becomes a part of this constitution—that principle that each county shall forever stand upon an equal footing with every other county in one house of the legislature—I do not think that in the next five hundred years it will be changed. Look at the history of other states. Look, after seventy-five years one state that had a popular representation in both houses, changed by a vote of the people its constitution so as to provide for the identical thing that we are here contending for. Has anybody suggested or indicated the necessity of changing the constitution of the United States so as to make the representation in the senate of the United States differ from what it is today? It never has been thought of; it never has been deemed necessary; in fact it has been considered a conservative check upon public excitement and popular clamor at times, which in themselves, in the head of excitement, are dangerous; it has been considered a safe and conservative check upon the popular clamor of the lower house of the legislature of this nation. I can see and conceive of no reason why that same condition of things should not exist as between counties and as to their relation to the state. The provision is here that senators are to be elected for four years: that half of them are elected every two years; so that all the time there is in the senate of the state if this article goes through as it should go through, senators of experience. Half of that body are men who were there two years before. The house is elected by a popular vote of the state, districted so as to give a representation according to some numerical basis of population. It may be in itself political; it may be democratic, it may be republican. Its tendency may be to legislate in a manner that is not in the best interests of the people of the state, but when its legislation goes to the other house, if you leave it as is herein provided, they find there a body half of which was elected two years before, and they find there a body that give matters of legislation, and will and always have been known to, in the history of this country from its beginning until today, more careful and deliberate, cool, calm consideration than the other house, and popular public excitement and politics cannot carry it away. Permit legislatures—both houses—to be elected under the clamor of some nonsense, pounded into the people by some demagogue or politician seeking office, regardless of principle, and you do not know what kind of legislation you will get. It is safe to presume that you would not get as conservative and sensible legislation as you would where you had one house from the people and the other a conservative one of a smaller number representing each county in the state, each not only looking after the interests of his county, but fairly considering with the other counties what would be for the best interests of the whole state; and I submit that in my judgment that kind of a legislature will give better, wiser, safer legislation—better laws—and be more satisfactory and more economical to the people of his state than any legislature composed of a popular representation in both houses. Mr. President, I have talked longer than I intended to on this question, but I feel and feel warmly upon the subject, and feel that in the interest of this whole state that if these counties will go down into their own consciences, that that conscience will dictate to them that what we demand is fair and right.

Mr. Burleigh of Custer: Upon the adoption of the amendment now proposed I demand the previous question.

The President: The gentleman from Custer demands the previous question. The question is shall the main question be now put?

The Chair put the question on the main question and a division being called for the same was declared carried by a vote of thirty-nine in the affirmative to twenty-three in the negative.

Mr. Maginnis of Lewis & Clarke: Mr. President, if the people who have formed a combination to disfranchise the citizens of these counties shall attempt to gag the convention without giving us a chance to express our views upon it, I hope the motion will be voted down.

During the delivery of the above remark there were frequent calls for the question.

The President: The gentleman from Lewis & Clarke is not in order. The question now is upon the adoption of the amendment offered by the gentleman from Deer Lodge, which was amended by the motion of the gentleman from Lewis & Clarke, to strike out in line two of Section 4 the word "sixteen" and insert in lieu thereof the words "twenty-six."

Mr. Craven of Lewis & Clarke called for the ayes and nays.

If there be no objections the ayes and nays will be entered on the journal. The section will now be read as proposed to be amended, The original amendment of the gentleman from Deer Lodge was to strike out the word "sixteen" and insert the words "twenty-one." The amendment to that was as offered by the gentleman from Lewis & Clarke, Mr. Toole, to strike out "sixteen" and insert "twenty-six." This last amendment has been accepted by the gentleman from Deer Lodge, and the question now is upon striking out the word "sixteen" and inserting the words "twenty-six."

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Brazleton, Burns, A. F., Burns, A. J., Carpenter, Cauby, Chessman, Courtney, Craven, Dixon, Durfee, Gaylord, Gillette, Hershfield, Hogan, Knowles, Maginnis, Mayger, Muth, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, Jos. K., Toole J. R., Warren, Winston, Mr. President—30.

Nays: Bickford, Breen, Browne, Buford, Burleigh, Burns, Edward, Callaway, Cardwell, Collins, Conrad, Cooper, Dyer, Eaton, Fields, Gibson, Goddard, Hammond, Hartman, Haskell, Hatch, Hickman, Hobson, Joy, Joyes, Kanouse, Kennedy, Knippenberg, Kohrs, Loud, Luce, Marrion, Marshall, McAdow, Middleton, Mitchell, Myers, Parberry, Ramsdell, Rotwitt, Watson, Whitehill, Witter—42.

Absent: Bullard, Graves, Webster—3.

The Chair announced the vote and declared the motion to amend lost.

Mr. Maginnis of Lewis & Clarke: Mr. President, I move to strike out the word "sixteen" and insert the word "one," and I do that to show that these gentlemen who want to move the previous question, and take this rather unfair advantage, that we can down this matter and make speeches on it so long as there is a numerical figure left in the English language and as we don't want to waste the twenty-six figures, Mr. President, I have begun with the beginning.

Mr. Burleigh of Custer here arose to his feet.

Mr. Maginnis of Lewis & Clarke: Sit down my frend. I have the floor. Now let us be good tempered and good humored and good natured about this matter.

The President: The gentleman from Silver Bow offered an amendment that just preceded the amendment of the gentleman from Lewis & Clarke, Mr. Maginnis and that amendment ought to be entitled to precedence.

Mr. Maginnis of Lewis & Clarke: Then I will withdraw my amendment.

Mr. Collins of Cascade: I move to adjourn.

The motion was seconded.

The President: The Clerk will read the amendment offered by the gentleman from Silver Bow.

The Clerk read as follows:

"I move to amend by striking out the word "sixteen" in line two and inserting the words "twenty-five." Offered by Warren of Silver Bow.

Mr. Maginnis of Lewis & Clarke: I second the amendment.

Mr. Burleigh of Custer: I demand the previous question.

The Chair stated the question.

Mr. Warren of Silver Bow: In connection with this matter I only have a few words to say, in reply to the remarks to my friend from Custer. I will not detain the convention long, and in fact I know of but little to say upon this matter. But, taking the last assessment of the territory of Montana as a basis of the sixty-seven millions of dollars, the three counties he speaks of pay taxes on twenty-eight millions of dollars. Taking the vote as an index, all the counties of this territory together poll a vote of 40,044 of which the counties of Silver Bow, Deer Lodge and Lewis & Clarke poll 23,368 or more than one-half. Now under their proposition they propose that a minority shall give to a majority of the citizens of this territory a representation of one-fifth or less than one-fifth in the state senate. This is not the only question that is before this convention, and if we do not stop now and consider where we are drifting we will wind up with the State of Montana assuming the indebtedness of all these smaller counties. It is a proposition that has not been acted upon by this convention but it was proposed by the gentleman from Custer, Mr. Burleigh, that the state shall assume the indebtedness.

Mr. Burleigh, of Custer: "Sufficient unto the day is the evil thereof."

Mr. Warren of Silver Bow: And instead of these larger counties they speak of wanting the earth, it strikes me that the smaller counties have started in on that kind of a proposition. Until 1888 the county of Deer Lodge paid taxes on fourteen hundred thousand dollars in land, which is nearly three times that of what any county in this territory pays among the smaller counties, with the exception of Gallatin. It is over three times what the county of Custer pays. The agricultural interests of Deer Lodge county—the agricultural interests of Lewis & Clarke county are second only to those of Gallatin. The county of Lewis & Clarke last year paid on agricultural lands and improvements over two millions of dollars assessed valuation. I feel that the interests of all are alike upon this question. I cannot see how a gentleman representing or claiming to represent a county is going back home and vote to disfranchise 20,000 people to help out 400 living in a small county. Another phase of this question is this: All over eastern Montana it is made up of large counties, western Montana is now thickly settled by the small counties. It will only be a few years when these counties of Dawson, and Choteau are settled up and those counties will then be divided up, and under this system of representation it will be the other people who are wanting the earth and who will have it. The county of Dawson is capable of making fifteen counties of the size of Silver Bow, comprising less than one-tenth or less than one-twentieth of the population, to be cut up into fifteen counties, and when they walk in here with fifteen senators, whatever they demand they would get, that is all there is about it. During the history of this territory for the past ten years this same system of representation has been in force as now—one council member for each county. One council member for each county has been the system heretofore, and only those who have tried, and those who have gone up against this thing know how hard it is to get any legislation protecting the mining industry in any way out of any legislature that has met heretofore. Ten years ago this coming winter, the first mining law was passed. It was passed after thirty-nine days of hard, earnest work, both on the floor and in the lobby, and then it passed the house by a very small majority, and on the last day. I went with the chairman of the committee to the governor of this territory at twenty minutes after eleven on the last day of the session myself, for him to approve that law. There has hardy been a session of the Legislature that some effort has not been made to repeal or restrict that law. I claim that any other law than the one now in force would shut down one-half of the mines of this country. Furthermore there is this about it, that a senate composed as these gentlemen propose to have it composed, with a gentleman representing any of these larger counties coming with any proposition, no matter how just, they would simply laugh at him: and if this bill is passed—if this is to become a law—if five hundred men are to have the same representation that ten thousand are, why the sooner we come to a vote and the sooner the Governor issues his proclamation again convening this convention; the better off we will all be. I am opposed to the bill.

Mr. Craven of Lewis & Clarke: I am astonished at the scene before us. I had supposed, sir that gentlemen on this floor were expected at least to assume as best they could, in their inexperience, the role of statesman. I have expected, sir, that our constituents presumed that the delegates on this floor should occupy a high, elevated plane of statesmanship, above all partisanship, and should bury all ideas of personal aggrandizement or local advantage in their general desire for the general good of the people of the territory. I am loath to believe I was mistaken. The scene indicates, and the motives and actions of the delegates who have spoken upon this floor unmistakably show, that we are invited down to a place of action but little above that of the common pot house politician. Instead of spending the last month in a desire to subserve the general interests of the territory at large, we now learn that that time has been expended in conspiracy and trading and intrigue, in order to help out some particular part What is the proposition before us? Are we really living in a republican form of government? Do we really have a constitution of the United States giving to each state, and guaranteeing to each state, a republican form of government, based upon the will of the majority? The proposition before us, if I understand it, is to pass through a gagged convention the idea that area should be represented, and not men and women. (Applause) Why sir, it is equivalent to saying "Go all over this broad domain of ours, and let the rocks and the grasses and the squirrels and the cattle have representation instead of men and women"—the most preposterous idea, I think, that has ever been seriously considered by a parliamentary assembly. How do you know if you divide up the territory into so much area and say that so much space shall have a representation, but that the changes of the future may come in such shape that the population of the few will be very much less than what it is now? How do you know but what the mines may be exhausted, as mines often are, and the population very materially decreased, so that now where you have a thriving village or city you will have nothing but the deserted houses occupied by bats, and a few tottering, gray haired, old men, and that county, no matter what its population may be, shall be entitled to the same representation on the floor of the senate as the counties of Silver Bow or Lewis & Clarke, or the most populous county in the territory? There has been considerable talk here about the tyranny of the majority. It has been said that the counties of Lewis & Clarke, Silver Bow and Deer Lodge, I think it is, have been tyrannizing over this stricken eastern country for twenty-five years back I do not know how that is. We will concede that they have been. We will concede for the sake of the argument, that in the future we will get down to a low plane of statesmanship and down to tyrannizing. We will concede that all of the public buildings will be erected in these three counties, and that, as the gentleman says (referring to Mr Middleton, of Custer) his constituents can come before us only in the shape of petitioners begging justice on suppliant knees But let us reverse the thing and put the shoe on the other foot—that these three counties shall not be represented on the basis of population, but with reference only to the mere matter of area, and only have the same representation as other counties of the territory, in other words the county with 6,000 voters shall have the same representation as a county of 400, or 25, if that shall become the population. Now let us concede that these outside counties will come down to the same plane of statesmanship that has been attributed to the three counties. We will say that they can carry everything simply because they have a majority. Is it not fair to assume that the outside counties will tyrannize over the other counties, those that have most of the population of the territory? I think it will be conceded that the industries of mining, commerce and manufactures will center in these largely populated counties. Suppose we want to pass a bill in favor of either mining, commerce or manufactures, will it not have to receive the approval of the delegates and representatives from the outside counties, and be subservient to their will and sanction? Will it not be completely at their mercy? And if there is going to be any tyrannizing will it not be better to let the majority tyrannize over the minority than to say that the minority shall tyrannize over the majority. That is the proposition. It has been said here that the small counties have been trading votes for the last twenty-five years in order to get anything in the way of legislation. Is the gentleman certain that on this proposition they have not been continuing the habit of trading votes? I feel free to say that I have been informed that my action and my vote on this proposition would influence the retaining of the capitol at Helena. Is it not likely that the same proposition may have been made to other gentlemen upon this floor? I care nothing comparatively regarding the capitol; it is a grain of sand compared with the proposition before us. I might vote it to Glendive or to Judith County, and if any mistake is made the people may correct it in the future, because time is a great leveler and evener and will adjust things according to their relative merits. Put this thing in your constitution, and it is not susceptible of amendment, because everything before going to the people must receive the approval of this very senate which you have created and given a majority therein to the outside counties. I do not know that the few remarks that I have incoherently uttered will be of any effect, but I cannot let this pass without rising in protest against what seems to me grossest injustice. (Applause)

Mr. Burleigh of Custer: My object in demanding the previous question was not to cut off the debate entirely, or to take advantage of any one; but I have spent a month's time here, and I am anxious to have this thing settled by a vote of the delegates sent to this convention for that express purpose. I do not wish to have an expression here that is not the expression of the delegates and I presume of the constituents that sent them here, and it was with that intention of saving time—of economizing time, and to make it possible that we might get through here some time with our labors and get home that I called for the previous question. With regard to passion, I certainly have not the emotion of passion in my heart, and the only indications of it that I have seen have been the excited expressions and flushed countenance of my chivalier friend from Lewis & Clarke County. I demand the previous question.

The President: The previous question has been demanded.

Mr. Craven of Lewis & Clarke: I call for the ayes and nays.

The President: The question is now on the amendment of the gentleman from Silver Bow, Mr. Warren, to strike out "sixteen" in line 2 Section 4 and insert "twenty-five." The previous question has been called.

Mr. Hogan of Silver Bow: I demand the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Bickford, Breen, Buford, Burleigh, Burns, Edward; Callaway, Cardwell, Cooper, Dyer, Eaton, Field, Gaylord, Goddard, Hammond, Hartman, Haskell, Hatch, Hickman, Hobson, Joy, Kennedy, Knippenberg, Kohrs, Loud, Luce, Marrion, Marshall, McAdow, Mitchell, Myers, Parberry, Ramsdell, Rotwitt, Watson, Whitehill, Witter—36.

Nays: Aiken, Brazleton, Burns, A. F., Burns, A. J., Carpenter, Chessman, Conrad, Courtney, Craven, Durfee, Hershfield, Hogan, Joyes, Kanouse, Knowles, Maginnis, Mayger, Muth, Reek, Robinson, Sargent, Schmidt, Stapleton, Toole, Jos. K., Warren, Winston, Mr. President—27.

Absent: Bullard, Cauby, Graves, Webster—4.

Paired: Browne and J. K. Toole, Collins and Rickards, Gibson and Gillette, Dixon and Middleton—8.

The Chair announced the vote and declared the motion on the previous question carried.

Mr. Courtney of Silver Bow: I move to strike out Section 4.

The motion was seconded.

The President: The question is on the amendment of Mr. Warren, of Silver Bow.

Mr. Hogan of Silver Bow: I call for the ayes and nays on that.

Mr. Maginnis of Lewis & Clarke: Before that motion is put I move to amend by making it "twenty-three."

Mr. Kennedy of Missoula: I rise to a point of order. The previous question has been put and carried.

The President: The point of order of the gentleman is well taken. If there be no objection the ayes and nays will be entered on the journal on the adoption of the amendment of the gentleman from Silver Bow, Mr. Warren.

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Brazleton, Burns, A. F.; Burns, A. J.; Carpenter, Chessman, Courtney, Craven, Durfee, Gaylord, Hershfield, Hogan, Knowles, Mayger, Muth, Reek, Sargent, Stapleton, Toole, Jos. K., Warren, Winston, Mr. President—24.

Nays: Bickford, Breen, Buford, Burleigh, Burns, Edward; Callaway, Cardwell, Cauby, Conrad, Cooper, Dyer, Eaton, Fields, Goddard, Hammond, Hartman, Haskell, Hatch, Hickman, Hobson, Joy, Joyes, Kanouse, Kennedy, Knippenberg, Kohrs, Loud, Luce, Marrion, Marshall, McAdow, Mitchell, Myers, Parberry, Ramsdell, Robinson, Rotwitt, Watson, Whitehill, Witter—40.

Absent: Bullard, Graves, Webster—3.

Paired: Browne and J. R. Toole, Collins and Rickards, Gibson and Gillette, Dixon and Middleton—8.

The Chair announced the vote and declared the motion to amend lost.

Mr. Robinson of Deer Lodge: I move to reconsider the vote by which the amendment of the gentleman from Silver Bow was lost.

Mr. Hickman of Madison: I move to lay that motion on the table, and on that I call for the ayes and nays.

Mr. Kanouse of Meagher: I rise to point order. My point of order is that the main question before this convention is the adoption of the report of the committee on Section 4, and that the motion for the previous question having been sustained any further amendments are out of order and that the convention must go on and vote upon the main proposition which is the adoption of Section 4.

Mr. Reek of Deer Lodge: If I am in order I would like to move that when this convention adjourns it adjourn until four o'clock on Monday.

The motion was seconded.

The Chair understands the point of order raised by the gentleman from Meagher is that the previous question having been adopted the convention shall now proceed to vote upon the proposition, and that all further amendments are out of order.

Mr. Robinson of Deer Lodge: I understand that the vote was taken upon the main proposition.

The President: No, sir; the vote was on the amendment. The motion to reconsider takes precedence over other matters except a motion to adjourn or to take a recess, and hence the motion to reconsider it is now in order.

Mr. Hickman of Madison: Do I understand from that that the motion sent up a few minutes ago has been cut off.

The President: If the Chair decides that the convention shall proceed to the consideration of the main question it would cut off any further amendments. The point of order raised by the gentleman from Meagher is well taken, according to our old rules.

Mr. Rickards of Silver Bow: I move we take a recess until two o'clock.

The motion was seconded.

Mr. Warren of Silver Bow. I move to amend that when the convention adjourns that it adjourn until Monday at four o'clock.

The motion was seconded.

The Chair put the question on the amendment of the gentleman from Silver Bow, Mr. Warren, and a division being called for the same was declared carried by a vote of thirty-one in the affirmative to twenty-six in the negative.

Mr. Hogan, of Silver Bow: I move we adjourn.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Hogan, and a division being called for the same was declared lost by a vote of twenty-seven in the affirmative to twenty-six in the negative.

The President: The question now is upon the motion of the gentleman from Deer Lodge to reconsider the vote by which the motion of the gentleman from Silver Bow was lost.

Mr. Rickards, of Silver Bow: I move we take a recess until 2 o'clock.

The motion was seconded.

The Chair stated the motion.

Mr. Kanouse, of Meagher: I rise to a point of order. Rule No. 11 provides that when a question is under debate no motion except privileged question shall be put, and in the order in which they are given here, a motion to adjourn and a motion to lay on the table are the only two privileged questions. I rise to the point of order that the motion for a recess before the vote has been taken upon the main question is out of order.

The President: A motion to fix the time to which the convention shall adjourn and a motion to take a recess take precedence over all other matter.

Mr. Middleton, of Custer: I would like to call the attention of the Chair to Rule No. 11.

The President: The Chair will take pleasure in examining rule No. 11.

(The Chair here examined Rule 11.)

There is nothing stated here with regard to a motion to fix the time to which the convention was adjourned, but it is the established rule in Jefferson's Manual, a rule adopted in the House of Representatives of the United States, and a rule that is recognized everywhere that a motion to adjourn, and a motion to fix a time to which the convention shall adjourn, and a motion to take a recess, shall take precedence over all other questions; and inasmuch as there is nothing expressed in here to that effect the Chair is of the opinion that those rules ought to prevail.

Mr. Middleton, of Custer: I am aware of the fact that those are the general rules, but this convention has adopted rules for their government and guidance, and the rule says that no motion shall be received with the exception of certain motions, and among those is not the motion to take a recess. I think the point of order is not well taken.

The President: A literal and strict interpretation of the rules would justify the gentleman no doubt in taking his point of order. It is a question of whether this convention wants to place itself in opposition to established rules that are uniform all over the world. The Chair, however, would like to have the sense of the convention upon this question, and would ask that the convention give an expression upon the question

Mr. Warren, of Silver Bow: Is there any question before the House?

The President: The question is upon the motion to take a recess until two o'clock.

Mr. Warren of Silver Bow: I move to amend that by moving to adjourn.

The motion was seconded.

Mr. Middleton of Custer: I rise to the point of order that the motion is out of order. I am perfectly willing to have this question settled by submitting it to the convention.

The President: I would like to have the point of order submitted to the convention as to whether or not we shall adhere strictly to an interpretation of Rule 11 or not

Mr. Rickards of Silver Bow: In conformity with the wish of the Chair, as I understand it, and in order to get an expression of the convention, I take an appeal from the decision of the Chair.

The President: The Chair has not yet made any decision.

Mr. Robinson, of Deer Lodge: I would suggest to the Chair that even under Rule 11 this would not apply, because the question that is before the convention is not a debatable one and is not under debate. If you will apply rule thirty, it is a solution of the question. (Reading) "The rules of parliamentary practice embraced in Jefferson's Manual shall govern the convention in all cases where they are applicable and in which they are not inconsistent with the standing rules and orders of the convention."

The President: There is no question under debate. The previous question has been moved and the main question is not debatable. A motion to reconsider is not a debatable question according to "Jefferson's Manual", although it is a rule that obtains in the House of Representatives. Hence, there was nothing before the convention that was debatable, and the point of order that was taken by the gentleman from Deer Lodge is well taken. The question now is on the motion to adjourn.

The Chair put the question on the motion to adjourn and a vote being taken the same was declared lost.

The President: The question now is on the motion to take a recess until two o'clock.

Mr. Mayger, of Lewis & Clarke: I move to amend by moving to take a recess until four o'clock.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, Mr. Mayger, and a vote being taken the same was declared lost.

Mr. Chessman, of Lewis & Clarke: I move we now adjourn.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, Mr. Chessman, and a division being called for the same was declared lost by a vote of twenty-eight in the affirmative to thirty-five in the negative.

Mr. Joy of Park: I call for the question on the main question.

Mr. Rickards, of Silver Bow: I renew my motion that we take a recess until two o'clock.

Mr. Kanouse of Meagher. I rise to a point of order. The point of order that I make is that the entertaining of alternate motions to adjourn or take a recess will have the effect of entirely repealing the intent and effect of Rule No 13 which we have adopted for our guidance; that is, with regard to a demand for the previous question The rule says that its effect shall be to put an end to all debate and bring the convention to a direct vote on pending amendments and then upon the main question. I submit that the entertaining of alternate motions of this kind would defeat the parliamentary practice of the motion for the main question, and there would be no use of any rule upon that subject.

The President: The Chair would suggest to the gentleman that on the other hand if those rules were not allowed the convention might be tied up here indefinitely.

Mr. Callaway. of Madison: The point of order of the gentleman from Meagher, I respectfully submit, that when the previous question has been moved and seconded the only thing in order is "shall the main question be now put." If it has been once ordered by the convention, no motion even to adjourn is in order.

Mr. Luce, of Gallatin: What is the ruling upon the point of order taken by the gentleman from Meagher?

The President: The Chair has not ruled upon the question. The rules of the convention seem to be deficient on the subject. The Chair is of opinion that even after the main question has been ordered that the motion to adjourn takes precedence of everything, unless the convention has commenced to vote upon it. The mere ordering of the main question is not sufficient, unless the vote has begun.

Mr. Rickards, of Silver Bow. I assure you, Mr. President, there is no disposition on our part to embarrass you or to embarrass this convention, but with all due respect I made a motion some time ago that we take a recess until two o'clock. I now renew my motion that we take a recess until two o'clock. It has not yet been voted upon.

The President: The Chair will entertain the motion.

Mr. Middleton, of Custer: It seems to me that we ought to have some determination of this question. As the gentleman from Meagher says, alternate motions to take a recess and to fix the time should not be entertained. It is possible to block the wheels and prevent anything being accomplished at all. Rule 17 of the House of Representatives, which we have adopted, perhaps defines more fully what is meant by the previous question than anything else, and my understanding of it is, as stated by the gentleman from Madison, that not even a motion to adjourn is in order after the main question has been voted upon and ordered.

Mr. Rickards, of Silver Bow. I rise to a point of order. I believe there is only one recognized person in this body who can rule upon a point of order. If the gentleman has a point of order, my idea is that he can state that point of order, but cannot debate it.

Mr. Middleton, of Custer: I am simply calling the attention of the Chair to Rule 17 of the House of Representatives.

The Chair put the question on the motion to take a recess until two o'clock and a vote being taken the same was declared lost.

The President: The question now before the convention is upon the adoption of the section

Mr. Joy, of Park: I would like to ask if this does not carry with it the whole Proposition No. 19.

The President: It is the adoption of Section 4.

The Clerk called the roll.

The vote stood as follows:

Ayes: Bickford, Breen, Buford, Burleigh, Burns, Edward; Callaway, Cardwell, Cauby, Conrad, Cooper, Dyer, Eaton, Fields, Goddard, Hammond Hartman, Haskell, Hatch, Hickman, Hobson, Joy, Joyes, Kanouse, Kennedy, Knippenberg, Kohrs, Loud, Luce, Marrion, Marshall, McAdow, Middleton, Mitchell, Myers, Parberry, Ramsdell, Rotwitt, Sargent, Watson, Whitehill, Witter—41.

Nays: Aiken, Brazleton, Burns, A. F.; Burns, A. J.; Carpenter, Chessman, Courtney, Craven, Dixon, Durfee, Gaylord, Hershfield, Hogan, Knowles, Maginnis, Mayger, Muth, Reek, Robinson, Schmidt, Stapleton, Toole, Jos. K.; Warren, Winston, Mr. President—25.

Absent: Bullard, Graves, Webster—3.

Paired: Browne and Toole, J. R.; Collins and Rickards, Gibson and Gillette—6.

The Chair announced the vote and declared the motion to adopt carried.

Mr. Sargent, of Silver Bow: I wish to give notice that at some future time I shall move to reconsider the vote by which the section was adopted.

Mr. Chessman, of Lewis & Clarke: I move that we do now adjourn.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, Mr. Chessman, and a vote being taken the same was declared lost.

Mr. Callaway, of Madison: I move you, sir, that the vote by which Section 4 was adopted be now reconsidered, and that that motion be laid on the table.

The motion was seconded.

The Chair stated the motion.

Mr. J. K. Toole, of Lewis & Clarke: I know this proposition is not debatable, but I ask unanimous consent to make a statement not to exceed two minutes.

Mr. Callaway, of Madison: I have no objection to the gentleman saying a few words, provided this motion be put. But I do not withdraw my motion.

The President: The question before the convention is on the motion to lay on the table.

Mr. J. K. Toole, of Lewis & Clarke: I recognize by the very decided vote of the convention that it is the determination to reject, as it has already done, the proposition that was offered by me upon yesterday. Nothing that has been said has changed my opinion upon this matter, that the proposition before the convention is an unjust one, but I think the convention took a little advantage of the proposition when they did not permit, as I intended to do, the following amendments along the line in order that we might reach a number which would be satisfactory to the convention. I believe we have proceeded under a misapprehension. No gentleman on this floor, so far as I know, has acted under impure motives, but that there has been a misapprehension I very firmly believe. My purpose was to offer to make it twenty-five and then twenty-four, twenty-three and tweny-one and along down until we could have reached what I believe the convention would have ultimately endorsed, that there should be at least twenty or twenty-one members of the senate; and I think now it is due to the people of this Territory, in view of everything that has been said, that this motion to lay on the table ought not to be carried, but that some time and some opportunity for reflection ought to be had, when we can get out some more deliberate judgment on the proposition. I make this suggestion.

Mr. Callaway, of Madison: I call for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Bickford, Breen, Buford, Burleigh, Burns, Edward; Callaway, Cardwell, Cooper, Dyer, Eaton, Fields, Geddard, Hammond, Hartman, Haskell, Hatch, Hickman, Joy, Kanouse, Kennedy, Knippenberg, Kohrs, Loud, Luce, Marrion, Marshall, McAdow, Middleton, Mitchell, Myers, Parberry, Ramsdell, Watson, Whitehill, Witter—35.

Nays: Aiken, Brazleton, Burns, A. F.; Burns, A. J.; Carpenter, Cauby, Chessman, Conrad, Courtney, Craven, Dixon, Durfee, Gaylord, Hershfield, Hobson, Hogan, Joyes, Knowles, Maginnis, Mayger, Muth, Reek, Robinson, Rotwitt, Sargent, Schmidt, Stapleton, Toole, Jos. K., Warren, Winston, Mr. President—31.

Absent: Bullard, Graves, Webster—3.

Paired: Browne and Toole, J. R., Collins and Rickards, Gibson and Gillette—6.

The Chair announced the vote and declared the motion to lay on the table carried.

Mr. Warren, of Silver Bow: I move to adjourn until Monday at 4 o'clock. I move that that motion be reconsidered and that the convention adjourn sine die.

Mr. Burleigh, of Custer: I move to amend, if the gentleman is so anxious to get away, that indefinite leave of absence be granted to him.

The President: The motion is to reconsider the motion by which the convention fixed the time of adjournment at four o'clock on Monday.

The Chair put the question on the said motion and a vote being taken the same was declared lost.

Mr. Callaway, of Madison: I move that the convention do now adjourn.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Madison, Mr. Callaway, and a vote being taken the same was declared carried.

The convention stood adjourned until Monday, August 5, 1889, at 4 P. M.

TWENTY-SIXTH DAY.

Monday, August 5th, 1889.

The convention was called to order by the President at four o'clock in the afternoon.

The Clerk called the roll.

The President: Mr. Graves asks to be excused until tomorrow morning. Mr. Gaylord also asks to be excused until tomorrow morning. Mr. Muth also asks to be excused until Friday. If there be no objection, leave of absence will be granted to these gentlemen.

Mr. Aiken, of Silver Bow: Mr. Durfee requested me to ask leave of absence for him until tomorrow.

The President: If there be no objection, leave of absence will be granted the gentleman from Deer Lodge, Mr. Durfee.

Mr. Hartman, of Gallatin: Mr. Schmidt, of Silver Bow, requests leave of absence until tomorrow, and Mr. Joy, of Park County, asked leave to be excused until four o'clock, and he also desired me to state that he was paired with Mr. Muth on the legislative question.

Mr. Joyes, of Jefferson: Mr. Cardwell, of Jefferson County, desires to be excused until tomorrow.

The President· If there be no objection, leave of absence will be granted these gentlemen. Mr. Parberry also desired to be excused until Tuesday at ten If there be no objection, this excuse will be entered.

The Chaplain offered prayer.

The Clerk read the journal of the previous day.

Mr. Warren, of Silver Bow: I would ask what has been done with the resolution that I offered a few days ago, which was referred to the Committee on Mining and Water Rights.

The President: Will the Chairman of the Mining and Water Rights Committee give the gentleman the information?

Mr. Eaton, of Park: The Chairman of the Committee on Mining and Water Rights, I think left the hall a moment ago

Mr. Collins of Cascade sent up a report.

Mr. Middleton, of Custer· Mr. President, your Committee on Engrossment and Enrollment desire to make the following report.

The President: The report of Committee No. 7 will first be read by the Clerk.

The Clerk read as follows: Report of the Committee on the Finance of the State, etc., Mr. President, your Committee on the Finance of the State, etc., to whom was referred Resolution No. 26, by Maginnis, authorizing municipal corporations to incur indebtedness, to procure an ample water supply, have had the same under consideration, and beg leave to report that the Resolution embodies a very necessary constitutional provision. They therefore recommend its adoption. The committee have had before them a matter of similar import, and in their general report on Public Indebtedness will fully provide for the subject matter stated in said resolution.

August 2nd, 1889. (Signed) T. E COLLINS, Chairman.

The President: If there be no objection, the report of Committee No. 7 will be received and adopted. The Chairman of this committee proposes that the subject therein referred to shall have attention in their general report.

The Clerk read as follows· Report of Committee on Finance of the state. Mr. President, Your Committee on Finance of the state, to whom was referred Resolution No. 22, by Browne, prohibiting reduction or increase of fees or salaries of county, and municipal officers during the term for which they are elected, respectfully recommend that Committee No 10, on City, Town and County Organizations, be requested to incorporate in their report, a provision by which all state, county, town and other officers shall receive a fixed salary during their respective terms of office, as provided by law, and that the same be not increased during their term of office, and that the fee system be abolished. We further recommend that said resolution be referred to Committee No. 10 for such further action as may be necessary.

August 2nd, 1889. (Signed) T. E. COLLINS, Chairman.

The President: What is the pleasure of the convention concerning this report.

Mr. Kennedy of Missoula: I move that the report be referred in accordance with the suggestion of the committee.

The President: If there be no objection this report will be referred to Committee No. 10 for their consideration.

The Clerk read as follows: Report of the Committee on Enrollment, Mr. President, your Committee on Engrossment and Enrollment, to whom were referred propositions Nos. 1, 9, 10, 11, 13, 14, 17 and 21 for the purposes of enrollment, beg leave to report the same back correctly enrolled.

(Signed) MIDDLETON, Chairman.

Mr. Middleton of Custer: I move you that the several propositions just reported back by the Committee on Enrollment be referred to the Committee on Revision and Phraseology.

The President: If there be no objection this report will be received, and the propositions as enrolled, will be referred to the Committee on Revision and Phraseology, Mr. Warren, Chairman.

The President: The Chair would state to the Chairman of the Committee on Mining and Water Rights that an inquiry has been made for the resolution that was referred to that committee a few days since on the subject of memorial.

Mr. J. R. Toole of Deer Lodge: Mr. President, I find that there is some little difference of opinion between the members of the committee as to the report we shall make on that, and I have not been able to get that committee together. I wish to say to the members of the committee now, that after adjournment this evening, I would like to have them meet me in one of the Committee Rooms for the purpose of considering this resolution.

The President: If there be no objection, the gentleman will be granted further time.

Mr. Collins of Cascade: I would like to present the report of Committee No. 7, so that it may be referred to the Printing Committee, to be printed.

The President: Report of Committee No. 7 will be read by the Clerk.

The Clerk read as follows: Report of Committee on Finance of the State, &c. Mr. President, the Committee on Finance of the state, to whom was referred certain propositions relating to the Public Indebtedness, have carefully considered the same in connection with the second part of the subject matter committed to them, and have adopted in substance those suggestions which they have deemed of practical value, and include the same in the general report on Public Indebtedness herewith presented for the action of the convention. Your committee beg leave to call special attention to those sections relating to the indebtedness of counties and municipalities, which they believe, are in accord with the general sentiment of the people of Montana on these important questions. The committee have compiled these sections which they respectfully recommend be adopted and inserted in the constitution in the form of a separate article to be numbered and designated "Article Public Indebtedness."

(Signed) T. E. COLLINS, Chairman.

Article on Public Indebtedness.

Section 1. Neither the state, or any county, city, town, municipality nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law.

Sec. 2. The Legislative Assembly shall not, in any manner, create any debt, except by a law which shall be unappealable until the indebtedness therein provided for, shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied, and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of, such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which singly or in the aggregate with any existing debt or liability exceed the sum of one hundred thousand dollars ($100,000), except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election.

Sec. 3. All moneys borrowed by, or on behalf of, the state or any county, city, town, municipality or other subdivision of the state, shall be used only for the purpose specified in the law authorizing the loan.

Sec 4. The state shall not assume the debt, or any part thereof, of any county, city, town or municipal corporation.

Sec. 5. No county shall be allowed to become indebted in any manner, or for any purpose, to an amount including existing indebtedness, in the aggregate, exceeding five (5) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds and obligations in excess of such amount given by, or on behalf of such county shall be void No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars ($10,000), without the approval of a majority of the electors thereof, voting at an election to be provided by law.

Sec. 6. No city, town, township, or school district shall be allowed to become indebted in any manner, or for any purpose, to any amount, including existing indebtedness, in the aggregate exceeding three (3) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of, such city, town, township or school district, shall be void; provided, however: That the Legislative Assembly may provide for an increase in the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt."

On motion of Mr. Collins of Cascade the reading of the above report was dispensed with, and the same was referred to the Printing Committee, to be printed.

The President· The convention had under consideration when it adjourned Proposition No. 19, Article on Legislative Departments. That now comes under the head of unfinished business, and will have precedence of all other matters.

Mr. Burleigh of Custer Mr. President, I move that the article be put upon its final passage, and be adopted as part of the constitution.

The President: The Chair is not aware whether all the amendments had been considered or not. Section 4 was under consideration. We will proceed now to the remaining amendments that were proposed by the Committee of the Whole that have not yet been acted upon.

Mr. Middleton of Custer: I understand that the amendments reported by the Committee of the Whole had been acted upon entirely; and that after action had been concluded upon the amendments, the amendment offered by Mr. Toole of Lewis & Clarke was considered. That is my recollection of it.

The President· The Chair is informed by the Clerk that there are some amendments that have not been acted upon, that were reported by the Committee of the Whole.

Mr. Callaway of Madison The Clerk is certainly in error in making that report to the Chairman of the convention. I beg to call the attention of the convention to the fact, that under the rule all of the amendments in Committee of the Whole as recommended to the convention have been disposed of. Then, the amendment occurred upon Section 1 after disposing of those amendments, and the amendments were disposed of up to that time, to Section 4.

The President: The amendments that were reported by the Committee of the Whole have all been acted upon. The convention had disposed of

Section No. 4, and it was adopted. Now, are there any other amendments to be offered to the proposition? The motion of the gentleman from Custer was not seconded, I believe.

The motion of the gentleman from Custer was here seconded.

The President: It is moved and seconded that Proposition No. 19 be now put upon its final passage; and this motion will be in order if there are no further amendments to be offered. Upon this vote the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Bickford, Breen, Browne, Buford, Bullard, Burleigh, Burns, Edward; Callaway, Cauby, Collins, Conrad, Cooper, Dyer, Eaton, Field, Gibson, Goddard, Hammond, Hartman, Haskell, Hatch, Hickman, Hobson, Joyes, Kanouse, Kennedy, Knippenberg, Loud, Luce, Marrion, Marshall, Middleton, Mitchell, Myers, Rotwitt, Watson, Whitehill, Witter—39.

Nays: Brazleton, Burns, A. F., Burns, A. J., Carpenter, Chessman, Courtney, Craven, Dixon, Gillette, Hershfield, Hogan, Knowles, Maginnis, Mayger, Reek, Robinson, Sargent, Stapleton, Toole, Jos. K., Toole, J. R. Warren, Winston, Mr. President—23.

Absent: Cardwell, Durfee, Gaylord, Graves, Kohrs, McAdow, Parberry, Ramsdell, Rickards, Schmidt, Webster—11.

Paired: Joy and Muth—2.

The Chair announced the vote and declared Proposition No. 19 adopted as part of the constitution of the State of Montana.

The President: This proposition will now go to the Enrolling Committee for the purpose of being enrolled, and then referred to the Committee on Revision and Phraseology.

Mr. Warren of Silver Bow: Proposition No. 28 is, I believe, printed as amended in Committee of the Whole, and is now upon the desks of the members.

The President: That proposition will come then before the convention for final consideration. The Clerk will read over the sections, and if there be any amendments they will be received.

The Clerk read Proposition No. 28 as amended in Committee of the Whole and the convention as follows:

"Article—

Sec. 1. Members of the Legislative Assembly and all officers, executive, ministerial or judicial, shall before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation, to-wit: 'I do solemnly swear (or affirm), that I will support, protect and defend the constitution of the United States, and the constitution of the State of Montana, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or allowed it to be done by others in my behalf; that I will not knowingly receive directly or indirectly, any money or valuable thing for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law, so help me God.' And no other oath, declaration or test shall be required as a qualification for any office or public trust.

Sec. 2. All officers whose election or appointment is not provided for by the constitution, and all officers whose offices and duties may be hereafter created by law, shall be elected or appointed as may be provided by law.

Sec. 3. The Legislative Assembly shall have no power to authorize lotteries, or gift enterprise for any purpose, and shall pass laws to prohibit the sale of lottery, or gift enterprise tickets in this state.

Sec. 4. The Legislative Assembly shall enact suitable laws to prevent the destruction by fire, from any cause, of the grasses and forests upon lands of the state or upon lands of the public domain. the control of which may be conferred by Congress upon this state, and to otherwise protect the same.

Sec. 5. The Legislative Assembly shall enact liberal homestead and exemption laws.

Sec. 6. No perpetuities shall be allowed, except for charitable purposes.

Sec. 7. All county officers shall keep their offices at the county seats of their respective counties.

Sec. 8. In the disposition of the public lands granted by the United States to this state, preference shall always be given to actual settlers thereon, and the Legislative Assembly shall provide by law for carrying this section into effect.

Sec. 9. No railroad or other transportation company, or any agent, officer or employe thereof, shall grant free passes or tickets, at a discount, to members of the Legislative Assembly, or of the Judiciary or to any member of the State or County Board of Equalization, and the acceptance of any such pass or ticket by a member of the Legislative Assembly, or by such Judiciary or by any member of the State or County Board of Equalization, shall work a forfeiture of his or their office and the emoluments thereof; and any railroad or other transportation company violating any provision of this section shall forfeit to the state one thousand ($1,000) dollars for each and every violation thereof, to be recovered by an action at law."

Mr. Burleigh of Custer· I move to strike out Section 4. That is exclusively within the province of the legislature, and it is a work of supererogation to put it in here.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer, Mr. Burleigh, and a vote being taken the same was declared lost

Mr. Eaton of Park: In Section 3 of this proposition, it is a matter of taste, but with regard to the word "enterprise" it strikes me that that word ought to be in the plural. The use of the word in the last line is correct, but the word "lotteries" is used in the plural in the first place. and it should be I think "gift enterprises" instead of "gift enterprise" in order to conform with the word "lotteries."

The President. If there be no objection to the amendment it will so read.

Mr. Warren of Silver Bow: I have a section to be numbered 10.

Mr. Goddard of Yellowstone: I move to strike out Section 9.

The President: The gentleman from Silver Bow has offered an additional section.

The Clerk read as follows: "Sec. 10. All property, both real and personal of the wife owned or claimed by her before marriage, and that acquired by her after marriage by gift, devise, descent or otherwise, shall be her separate property, and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property as that held in common with her husband, and providing for the registration of the wife's separate property." Offered by Warren of Silver Bow

Mr Warren of Silver Bow. I move the adoption of the section.

The motion was seconded

The Chair stated the motion.

Mr. Robinson, of Deer Lodge· The only objection I have to that is that it is a matter within the discretion of the Legislature, and it is not necessary to adopt it in our constitution. We have laws on our statute books embodying the same thing, and under the same power. The Legislature has the power to pass all such laws as that.

Mr. Luce, of Gallatin If my recollection serves me, this is the same section that was stricken out by the convention when this proposition was reprinted. I think that that very section has been acted upon before by the convention

Mr. Warren, of Silver Bow· Mr. President, that is the same section that was considered in Committee of the Whole. As I understand, it is copied from the California constitution, and there was no opportunity to get the sense of the convention upon the matter. I believe it should be placed in the constitution.

Mr. Middleton, of Custer: My recollection of this matter is that this section was not only fully discussed in Committee of the Whole as being purely legislation—matters that are almost as fully covered by the statute at present—matters not proper to go into a constitution—and that the Committee of the Whole reported back to the convention that this section among others be stricken out, and the report of the Committee of the Whole was adopted Now, if that be true, it does not seem to me that the section could be reinstated except by a reconsideration of the vote by which the section was stricken out. I don't know what the minutes of the Clerk will show, but that is my recollection.

The Clerk read from the minutes as follows: Section 10 was stricken out and the following substitute offered: "The Legislature shall pass laws prohibiting the granting of free passes," &c.

The Clerk: That substitute was offered in convention.

Mr. Middleton, of Custer: Let me ask if the minutes show that these matters were done in convention.

Mr Hershfield, of Lewis & Clarke: Section No. 9 was adopted in convention.

The President: If it be true that this section was acted upon in convention and defeated, it can only be revived by a reconsideration of the vote It is now moved and seconded that Section 9 be stricken out.

Mr. Robinson, of Deer Lodge: If that is true, and this was acted upon in convention, each section of this proposition, why, then, it would be put out of order to strike out any section now—and no motion should be entertained except to amend.

The President: What section does the gentleman refer to?

Mr. Robinson, of Deer Lodge: I refer to the whole Proposition No. 28. The only thing that can be done with it now is to put it on its final passage.

Mr. Callaway, of Madison: The gentleman from Deer Lodge is quite correct. All of these propositions acted upon in convention and passed and referred to the Committee for Printing are all adopted.

The President: It was ordered to be reprinted, but the Chair does not understand that it was put upon its final passage and adopted.

Mr. Callaway, of Madison: They are passed and printed to be put upon their final passage.

The President: If there was no motion acted upon to put it upon its final passage, it is subject to amendment up to that point. The Chair does not understand that there was a motion made to put it upon its final passage.

Mr. Maginnis, of Lewis & Clarke: I wish to offer an amendment before that motion is entertained.

The President: If there is a motion to put it upon its final passage no amendment can be entertained, but the Chair must be informed upon that fact before the Chair can decide.

Mr. Maginnis, of Lewis & Clarke: If I remember, a motion was made, and then I think Mr. Toole, of Lewis & Clarke, moved before its final adoption that it be printed; after these amendments had been adopted and passed section by section, while it was still under consideration, Mr. Toole moved that it be printed so that the members could have it under their eyes before it passed from them.

Mr. Myers, of Yellowstone: Mr. President, this bill was acted upon and the amendments to each section were considered, and each section I think was considered, but there was no motion to put it upon its final passage. Each section was considered and it was agreed that it should be printed before put upon its final passage.

The President: It is moved by the gentleman from Yellowstone, which motion has been seconded, that Section 9 be stricken out.

Mr. Myers, of Yellowstone: I rise for information. Is that a proper motion for the House to entertain? Has not this convention already passed upon Section 9? Section 9 was separately adopted as all the other sections were adopted. I think it can only be considered by unanimous consent.

Mr. Eaton of Park: I have no desire to be captious, but I feel obliged to rise to a point of order, that this Section 9 has been passed by the convention, and that a motion to strike out is not in order, and the only way to reach it is by a motion to reconsider. I don't think unanimous consent is required at all.

The President: If the gentleman will wait a minute the Clerk will read the minutes upon the subject.

The Chief Clerk read portions of the minutes relating to the subject matter under debate.

Mr. Cooper, of Gallatin: Do I understand that a motion to reconsider Section 9 is now in order?

The President: Section 9 was amended, and unless the convention has placed it upon its final passage the whole section is open to amendment.

Mr. Robinson, of Deer Lodge: Do I understand the Chair to rule that this proposition is now open for amendment?

The President: Yes sir. The minutes show that it stands in status quo. The convention simply ordered it to be printed

Mr. Marshall of Missoula, sent up a resolution.

Mr. Field, of Park: I move to strike out Section 9.

The President: There is already a motion to that effect offered by the gentleman from Yellowstone, Mr. Goddard. That motion is now before the house.

Mr. Callaway, of Madison: I call for the ayes and nays on the question.

The President. If there be no objection, the ayes and nays will be entered on the journal. The question is on the motion to strike out Section 9.

The Clerk called the roll and the vote stood as follows:

Ayes: Aiken, Bickford, Brazleton, Browne, Bullard, Burleigh, Burns, A. J.; Chessman, Craven, Dyer, Fields, Gibson, Goddard, Hammond, Hartman, Joyes, Kanouse, Knippenberg, Loud, Luce, Maginnis, Marrion, Middleton, Mitchell, Reek, Rotwitt, Sargent, Toole, Jos K.; Toole, J. R; Warren, Whitehill, Winston, Witter—33.

Nays: Breen, Buford, Burns, A. F.; Burns, Edward; Callaway, Carpenter, Cauby, Collins, Conrad, Cooper, Courtney, Dixon, Eaton, Gillette, Hatch, Hershfield, Hickman. Hobson, Hogan, Kennedy, Knowles, Marshall, Mayger, Myers, Robinson, Stapleton Watson, Mr. President—28.

Absent: Cardwell, Durfee, Gaylord, Graves, Haskell, Joy, Kohrs, McAdow, Muth, Parberry, Ramsdell, Rickards, Schmidt, Webster—14.

The Chair announced the vote and declared the motion to strike out Section No. 9 carried

The President: There is an amendment by the gentleman from Missoula, Mr. Marshall, to be numbered Section 10, as follows: "No person elected to any other State or county office shall be eligible to be elected to any other office during the term for which he is elected."

Mr. Marshall, of Missoula: I move the adoption of that amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Missoula, Mr. Marshall, and a vote being taken the same was declared lost.

Mr. Collins, of Cascade: I move to amend Section No 1 by striking out all after the word "fidelity" on line 5, and down to and including the word "law" on line 11

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Cascade (Mr. Collins), and a vote being taken the same was declared lost.

Mr Maginnis, of Lewis & Clarke, sent up an amendment.

The President: The gentleman from Lewis & Clarke offers to amend by striking out "two-thirds" in line 2 of Section 14, and inserting in lieu thereof the word "majority".

A Member: There is no Section 14.

The President. Section 14 was stricken out

Mr. Hershfield, of Lewis & Clarke: Those two sections were adopted. They were not reprinted because it was not necessary as there was no amendments to them

The President: The Clerk will look up the record on that matter.

Mr. Bickford, of Missoula: I would state that Sections 13 and 14 were both passed upon by the convention, and that where amendments were carried in the Committee of the Whole, and they were omitted in the printed copy because the amendments, I presume, were all of so little importance.

Mr. Hershfield, of Lewis & Clarke The gentleman from Missoula is quite correct

The Chief Clerk: (After referring to the record) Mr. Presideent, there was no action taken upon these two sections whatever. They were neither adopted or amended. At that point the motion to print the sections considered was made, and there was no further action taken on these amendments.

The President: The question now before the convention is upon the adoption of the amendment offered by Major Maginnis that in Section 14, line 2, the words "two-thirds" be stricken out, and the word "majority" inserted.

Mr. Maginnis, of Lewis & Clarke: Mr. President, when the motion was made by my friend from Missoula, Mr. Bickford, in Comittee of the Whole, in regard to the preceding section, that whenever it was necessary to call a new constitutional convention, a majority of the Legislature should be sufficient, my friend. Dr. Burleigh, made an objection, which I thought was tenable. I did not believe that a new constitutional convention could be called except under such great public demand for it as would insure the election of two-thirds of the Legislature in its favor; but when it comes to merely submitting the simple amendment to the constitution to the people, I think it ought to be done by a majority of the Legislature. We had under consideration a little while ago in the article on suffrage, this question of granting the right of suffrage to women. This convention was almost equally divided on the question, and I believe it was lost by a tie vote. During that debate considerable was said about being willing to leave this matter to the people, and to trust the people in regard to these amendments. I stated then that I was willing to trust the people to vote on that, and I am willing, and I think it is only right that a majority of the Legislature should be able to submit a proposition to amend the constitution to the whole people, which I think is formal enough and difficult enough to make it perfectly secure and an entirely safe course to take. Here again the other day a proposition was adopted in regard to representation by an extremely divided vote of the convention. Other propositions may yet come up which will make the constitution still more objectionable perhaps to some of the people to whom we submit it. Now, I presume that no member of this body would care to see this constitution adopted by a greatly divided vote; they would not care to see a campaign for it and a campaign against it led by speakers in the contest perhaps this fall. Intending, as I do, to support it myself, although of course as every other individual citizen, if anything is so objectionable that my sense of right is concerned in it, I would reserve the right, as I believe every other member should, as a citizen, to oppose it. But I think we all intend to do what we can to secure its adoption by the people, and in view of all these things I submit that it would be wise not to make the process of amending it so extremely difficult that it could not be accomplished. I think a majority of the Legislature have a right to submit a proposition, and a majority of the people to adopt it, and while I agree with my friends in requiring two-thirds of the Legislature to call a new constitutional convention, I think in regard to the mere submission of amendments that we ought to take a different course.

Mr. Burleigh, of Custer: I was very much pleased with the views expressed by my friend, Mr. Maginnis, the other day, and especially delighted that I should have such able support as I had from him; and the reasons which I assigned then I will not take time to assign again. Now, what has come over this convention, or the shadow of any distinguished gentleman's dreams to cause this change is more than I know. Now, I do not believe that a bare majority of the Legislature should have the power to submit amendments to this constitution, or to call a convention, or anything of that kind. I think it ought to be placed a little farther off; I think it ought to be placed where it would take at least two-thirds of the members of the Legislative body to call a convention for the purpose of amending the constitution. I certainly have not changed my mind, and see no reason to; and no matter what measure may be adopted here in this convention it is adopted by the will of the convention, and I most certainly ground my action and my views upon what I believe to be a firm, well established principle, and that is, in submitting a constitutional amendment it should require at least the vote of two-thirds of the members of the Legislature before it can be submitted.

Mr. Maginnis, of Lewis & Clarke: Just one word in reply. Now, the gentleman took me to task during the debate on the suffrage question as not being willing to trust to the people—that is the Legislature, the representatives of the people—upon any proposition of that kind. Now, I am willing to trust the Legislature to submit a proposition to the people, but my honorable friend from Custer really does seem to have changed his mind, for he is not willing to trust the Legislature to do that.

The President: The question is upon the adoption of the amendment.

Mr. Callaway, of Madison, called for the ayes and nays.

The President: The question is upon the amendment of the gentleman from Lewis & Clarke, Mr. Maginnis, to strike out the words "two-thirds" in line 2 of Section 14 and insert the word "majority".

Mr. Witter, of Beaverhead: Will an amendment to the amendment be in order?

The President: Yes sir.

Mr. Witter, of Beaverhead: I move to amend by making it read "a majority of the members elected."

Mr. Maginnis, of Lewis & Clarke· I believe that is the way it is now. As it reads now it says: "And if the same shall be voted for by two-thirds of the members elected to each house," &c. Now, I propose to amend it so as to read: "And if the same shall be voted for by a majorty of the members elected to each House."

Mr. Middleton, of Custer: Mr. President, I desire to say a word in this matter if it is not too late.

The President: Both sides of the question have been put, it can only be by unanimous consent.

Mr. Middleton, of Custer: There was an amendment to the amendment suggested just now.

The President: The amendment was not submitted, however. The ayes and nays had been called for on the previous amendment.

Mr. J. K. Toole, of Lewis & Clarke: I ask that the gentleman may have unanimous consent.

Mr. Maginnis, of Lewis & Clarke· I second the motion.

Mr. Robinson, of Deer Lodge: I object.

The President. If there is any objection, no further remarks can be received.

Mr. Middleton, of Custer· If the Chair will permit me, I rise to a point of order; the ayes and nays had been called for. After that the Chair entertained an amendment, and that was accepted

The President: There was no one seconded the offer to the amendment and no acceptance of it.

Mr. Middleton, of Custer· The Chair at least stated that an amendment to an amendment was in order.

The President: Since that time the Chair stated to the convention that the ayes and nays would be entered on the journal. After that statement is made by the Chair no further debate will be allowed except by consent

Mr. Middleton, of Custer (To Mr. Robinson): Do you insist upon your objection?

Mr. Robinson, of Deer Lodge· I don't see any reason for changing the rule.

The President: Proceed with the call of the roll

The Clerk called the roll, and the vote stood as follows·

Ayes· Aiken, Breen, Bullard, Burns, A. F.; Burns. Edward; Cauby. Chessman, Collins, Courtney, Craven, Dixon, Hammond, Hershfield, Hogan, Joyes, Knippenberg, Knowles, Maginnis, Marshall, Mayger, Myers, Robinson, Rotwitt, Sargent, Stapleton, Toole, Jos. K.; Toole, J. R.; Witter, Mr. President—29.

Nays. Bickford, Brazleton, Browne, Buford, Burleigh, Callaway, Carpenter, Conrad, Cooper, Dyer, Eaton, Fields, Gibson, Gillette, Goddard, Hartman, Hatch, Hickman, Hobson, Kanouse, Kennedy, Loud, Luce, Marrion,, Middleton, Mitchell, Reek, Warren, Watson, Whitehill, Winston—31.

Absent: Burns, A. J.; Cardwell, Durfee, Gaylord, Graves, Haskell, Joy, Kohrs, McAdow, Muth, Parberry, Ramsdell, Rickards, Schmidt, Webster—15.

The Chair announced the vote, and declared the amendment of the gentleman from Lewis & Clarke lost

Mr. Craven, of Lewis & Clarke: If amendments are in order I wish to offer one.

The President: The gentleman from Lewis & Clarke offers an amendment to Section 14 by inserting the following after the first word "house" on line 3, "except in the case of proposed amendments with reference to an increase in the number of State Senators and the reorganization of senatorial districts when a majority vote of the Senate will be sufficient instead of the usual two-thirds vote of that body."

Mr Craven, of Lewis & Clarke: I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

Mr. Callaway, of Madison· I call for the ayes and nays.

Mr. Middleton, of Custer: It does not seem to me that this particular matter of the representation in the upper house of the Legislature should be any easier of amendment than any other matter that might come before the Legislature, or before the people in the shape of proposed amendments The people elected seventy-five men to come here, who really are the people themselves, making this constitution. They intrusted this work of preparing a fundamental law for the State of Montana to us here in convention. Now, I agree with what Dr. Burleigh has said, and with what Major Maginnis said the other day on this identical question, that the matter of an amendment to the constitution should not be an easy matter. Take it from a political point of view where a party might have a bare majority in both houses, why, they could submit any and all kinds of questions to the people, and those matters continually coming up could do no good. If the people adopt this constitution as it will be submitted to them, it seems to me that it ought not to be any easier of amendment than when proposed by two-thirds of the members elected in each house of the Legislature, and the gentleman can show no argument in favor of amending in this respect with any more facility than in any other respect. It is simply a question, as it has appeared, somewhat of local feeling. Several counties are here, each and all of them represented. By a very decided vote, it was determined beyond question that it was the sense of this convention that in the upper house of the Legislature each county should stand on an equal footing, and have the identical and the same representation. Now, because the minority of this convention are dissatisfied, or seem to be, with the action of the majority, they desire to incorporate this easy mode of submitting the question to the people so that the minority of this convention may overcome what a large majority have undertaken to make a part of the fundamental law. It doesn't seem to me that it is right; it doesn't seem to me that there is any good reason for it. I do not believe the constitution should be easy to amend. I do not believe that a proposition, either to hold a convention for the purpose of preparing a new constitution, or amending it, or of adopting a single amendment, should be permitted to go before the people unless by a vote of at least two-thirds of the members elected by the people to each house of the Legislature. So far as the matter of representation is concerned, that was discussed to a considerable extent here last Saturday, and everybody had a chance to consider it carefully. The vote was decided, and by a large majority, in favor of the representation as indicated in Section 4. Now, unquestionably, the amendment proposed by the gentleman from Lewis & Clarke, Major Maginnis, although not so patent on its face, had the object in view of perhaps in the near future defeating what is the will of this convention. The gentleman from Lewis & Clarke, Mr. Craven, puts the matter plainly before the convention, so that it can be seen that it is the object of the minority to overcome the action of the majority of the convention. It would seem that that condition of feeling ought not to exist here. So far as I am concerned, when I stand with the minority on a proposition of that kind and find that the majority are strongly against me, I submit; and when this constitution is concluded and ready to be submitted to the people, although, beyond doubt, there will be many things that I would prefer to see out of it, I intend to stand by that constitution and do all that I can to see that it is adopted by the people. But to say that there should be a feeling grow up among the minority of this convention which on its face shows that it is the purpose of the minority to overcome the action of the majority, it does not seem to me that the convention wants to place itself in that kind of light.

Mr. Eaton, of Park: I move the motion of the gentleman from Lewis & Clarke be laid on the table.

The motion was seconded.

Mr. Burleigh, of Custer, called for the ayes and nays.

The President: If there be no objection, the ayes and nays will be entered on the journal.

Mr. Myers of Yellowstone: I would like to inquire what that motion to lay on the table would carry with it.

The President: The motion to lay this amendment on the table will carry the section with it.

Mr. Eaton, of Park: If the Chair rules that way I will withdraw the motion.

Mr. Carpenter, of Lewis & Clarke: What do I understand to be before the House?

The President: The motion to lay upon the table is withdrawn by the gentleman. The question now before the convention is the adoption of the motion of the gentleman from Lewis & Clarke, Mr. Craven.

Mr. Carpenter, of Lewis & Clarke: Mr. President, upon this question, and among others, I must vote according to settled convictions. Upon the question of woman suffrage, I voted against extending the suffrage to women because it was from a strong conviction that they did not want it, but I am in favor of extending to them the largest liberty as to property Upon the question before us in regard to the organization of these senatorial districts, I voted firmly against the Senate arrangement which has been made by this convention. I did not believe that the principle which lies at the bottom of representation in the Senate of the United States applies to this Territory, or to the State which we are to form. We all know that thirteen independent States formed the constitution of the United States. It is stated that that constitution was formed by the people. It was, through their agents, but the people never directly voted upon it Those Thirteen Independent States through compromise in regard to senatorial and representative representation arranged the constitution and the representation which they were to have. The states reserved to themselvs many powers, and among other things, the right to the representation as States of two senators for each The States occupied an entirely different position. They are sovereign except as to the powers that have been yielded to the United States Now, the analogy does not exist between those states of the United States and those states and the counties within them. Each state is sovereign except it has yielded certain powers to the United States government The United States were at that time; now the United States is, which simply states the distinction. In reference to the relation of the State to the counties, the scene shifts. The States are sovereign and the counties entirely dependent. The counties of Montana have no sovereignty of their own. The State of Montana is sovereign as other States, but the State of Montana, except as limited by this constitution, can abolish a county by amendment if it chose. It can create a new county or counties, or do whatever it pleases with them. The government of the United States has no control over states, except that which was yielded to it by the states themselves. Now, I have been in favor of popular government, I am still in favor of it. If the theory that the counties of a state bear to a state the analogy of the States to the United States, then we ought to change our Preamble and say that the United Counties of Montana ordain this constitution. (Applause in the galleries) Go further in the Bill of Rights and say the power is not conceded to the State or prohibited from the State, or reserved to the counties (Applause)—follow out the analogy of the states of the Union to the United States government. Therefore, believing that this analogy does not exist, I have voted against this system of senatorial representation, because I believe it entirely wrong in principle, and without a principle or an analogy to sustain it. (Applause) With that system we will have rotten boroughs as they have in England, as they have in the State of Connecticut today, where a single vote in a country town will offset the vote of the populous cities of Hartford and New Haven. This is not popular representation, but it was put upon the people nearly one hundred years ago and it is there still—a simple theory or pretext of representation without any actual representation at the bottom I am in favor of two bodies for the Legislature. In the United States government there is a reason for it, the sovereign States being represented in the United States government which they have made, and the people back of it being represented in the lower House Here it is all popular representation It is in all the States. There is no difference between the constituencies of the Senate and the House of Representatives in the proposed State of Montana, there is not in any of our States. The distinction made is that the House shall be principally a popular body, and the senate shall represent simply a larger constituency Here the constituencies will be entirely the same. I am in favor of two bodies, although the constituencies are the same, although there is no reason for what is termed by high-flown writers. "our government system", yet I know it is important that there should be two branches to the legislative body, that one may be a check upon the other in a certain way—not a check because either one should have any larger powers than the other, but because the measures that pass one body through haste or improvidence or scheming, perhaps, will have a little time in the other body before they become law, and I think that if this convention had been divided a great many crude provisions that will go into this constituton would have had a closer scrutiny, and we would have a far better constitution than we will have. It is enough that the constituencies are not the same as they would be in the Senate and House of Representatives, but there would not be that haste. Here, as a matter of fact, anybody knows that if there are four flaws in an article proposed here, members may offer amendment to two and they will pass; nobody will object to them; but offer an amendment to two more and somebody will say "Stand by the committee." Now, having those settled convictions, I voted as I have done for this House of Representation on what I believed to be principle. There is no difference between the two houses; it is a popular rule of popular sovereignty in each case. I have the same opinion in regard to some other matters. I believe it is dangerous to leave it to the Legislature to pass a bill by a bare majority of the members present, and I have voted against that. I have known again and again of the most cruel and improvident measures because a simple majority could pass them, and Legislatures over again have changed that rule, and a majority of them now favor upon good grounds that no bill shall pass except by a majority of all elected.

Now, we come to this matter of amendments to the constitution. It is proposed that a bare majority of those elected shall tamper with the constitution. When the constitution is once adopted it should not be changed for every trivial cause, and at the beck of every man. (Applause) I must stand on such settled convictions no matter where they hinge. Now, I am in favor of no amendment being submitted to the people—no amendment to this constitution being so submitted—without the endorsement of two-thirds of the Legislature. (Applause) I believe that the most ridiculous, grotesque proposition you ever heard of, with a single flit of the breeze, would pass through the Legislature and would be submitted to the people; there would be no end to the propositions that would be submitted to them at every election. There ought to be some check to them. I would favor this: If a majority of two successive legislatures would recommend the submission to the people of any question, I would favor that, because that would give time for reflection, but I would never favor the submission of a proposition by the simple majority of one Legislature. If the simple majority of one Legislature favor the submission of the propositions and the majority of the next approve of it also after reflection and consideration and decide to submit it to the people, then I would favor the proposition; but if it is to be done by one Legislature, I say that it should never be done except upon the concurrence of those elected to each body. Now, when it comes to this Senate representation, while I am in favor of the Senate being elected by the people in proportion to the population, and am firmly of that opinion, if this convention has decided otherwise, then I cannot change my opinion as to the matter of submitting amendments simply because that would afford an opportunity to submit again one measure that I am in favor of. I have never voted in this convention except on principle, every measure standing on its own merits, and I would despise the man who would vote for one bad measure because by that measure he could get another person to vote for what he regarded a good measure. As I have stood upon every question, upon their merits, I stand now upon the merits of this, whether this be a particular proposition that I favor or disfavor. If we make this exception then we want to make another exception, that the question of female suffrage shall be submitted. We want to go on farther and submit the question of water taxation, irrigation, mining taxes and everything else as a separate proposition on a majority vote, when the convention says that every proposition must be submitted only upon the concurrence of two-thirds. I know of no other ground, except to stand upon principle in reference to all questions submitted here, and I believe that this is the highest legislative body that there could be in the Territory. In one sense, it is purely a legislative body, because we recommend the fundamental law of the Territory, which is the highest law; but at any rate, whether as constitution makers or fundamental law makers, we ought to make such a record here as will be an example to the Legislatures that are to come after us, to carry out the provisions, the skeleton work of which we lay out for them in this constitution. Therefore, for the reasons which I have given, I shall vote against this amendment.

Mr. Robinson, of Deer Lodge, called for the previous question.

Mr. Whitehill, of Deer Lodge. I would ask that the gentleman do not press this previous question. I think that I have not intruded very much upon this convention in speech-making, but I desire an opportunity to explain and give some of my reasons for my vote on this proposition. I hope the gentleman, knowing somewhat the facts, will withdraw his motion at present for the previous question. I seldom ask such a favor, but I would like to have his motion withdrawn.

The President: The motion of the gentleman from Deer Lodge was not seconded The gentleman from Deer Lodge has the floor.

Mr. Whitehill, of Deer Lodge: Mr. President, I am willing to attribute honesty of purpose to every member of this convention in the record of his vote on every proposition that comes before us, and I believe that every gentleman of this convention has done so, and yet there have been charges of unholy combinations against members of this convention for the purpose of influencing their votes. It has been charged on members of this convention that by means of these unholy combinations they have outraged gentlemen who are aspiring for position at the hands of the people. They have charged that members of this convention have outraged their constituencies, and they have hurled denunciation with their mighty force that the indignation of this outraged constituency will relegate the persons who have entered into these combinations into the confines of Dawson County. Now, Mr. President, I am proud to say that I have voted for this proposition; I am proud to say that every vote of mine on the ayes and nays that has been recorded here is in favor of this proposition; and I am willing to say that it is the most righteous proposition that has come before this convention I say that by means of this a check will be put upon unholy combinations of capital for the purpose of rushing through hasty legislation I say that it will be a check upon unholy combinations and secret combinations of the laboring element or any other element of secret organization to get through hasty legislation. You will remember, many of you—and it was before my time in Montana—and the time they had to get through what was known and called the "Gag Law," and every man interested in mines understands why that "Gag Law" was passed It was to prevent any persons taking in their own hands the law and preventing other persons who had equal rights from performing their duties, and the old miners of that date will understand that that could not be passed by the influence and by all the votes of the populous counties until an appeal had been made to the small counties, to the farmers, to stand in and protect and do justice to the mining rights. Now, there is one instance of where such legislation would have been disastrous. For instance, the small counties, if they should desire on any occasion, could unite with the large counties. I say that on every occasion—and history will substantiate me—that whenever an appeal is made to the farmer constituencies—to the cowboys, as they are sneeringly called by certain members of this convention—that they are the ones that will always listen to appeals in favor of justice and of equity and right. You all know when Rome was on the verge of destruction they sent out for old Cincinnatus to come in and lead the armies on account of the corruption of the mass of the people and their distrust in their leaders. Now, I say this is one of the most righteous propositions in my opinion that has been passed by this convention. Now, the gentlemen talk about a principle being involved in this thing and they sneeringly say, "Shall Dawson County with its 400 votes have an equal right with Lewis & Clarke County with its 6,000 votes, and with Silver Bow with its 7,000 votes." They say the man who performed such and such a thing is committing treason To whom? To the gentlemen who would like to have themselves placed before this public for high office, and they are the only ones I know of who feel that they have been outraged on this occasion. Not an honest miner, not an honest mining man—and I have talked with them in my county, and have never been assailed in my views—they say, "We are proud you had the courage to vote as you did"; none of these men have raised their voices against this And I say I am in favor of this proposition for these reasons, gentlemen of the convention, that it is a righteous proposition, and one of the best ones that has ever been presented to this convention.

Mr. Maginnis, of Lewis & Clarke: I wish to have just one minute for a personal explanation. The gentleman from Custer, I think very unwittingly, charged me with having submitted this amendment for a certain purpose As I said before, when the debate on woman suffrage was up, and when I was being charged with not being willing to trust the people, I at that time made up my mind that I would at the proper time offer an amendment to the constitution saying that a majority of the Legislature might submit a proposition to the people. Now, I am against this amendment offered by my colleague from Lewis & Clarke, but I stand, like my other colleague from Lewis & Clarke, on the general principle that a majority of the Legislature should at any time be able to submit a motion to amend their constitution to the people, and I do not believe that any fantastic or any wicked measures would be submitted, and if they were submitted I do not believe that under any circumstances the people would endorse them. I had an amendment prepared to offer in the Commitee of the Whole to this effect, but my friend from Missoula, whom I am sorry to see, has rather reversed his position upon it, offered an amendment covering it, and I was one of the fifteen gentlemen who voted for that, intending at the time when it came before the convention to more fully liberate my views as to the necessity of this on all occasions. I believe it would have taken with this convention today but the gentlemen have gotten the notion in their heads that it was intended to subserve some prearranged purpose. Now, I am so strongly in favor of the right of the Legislature to submit amendments to the people at any time that I would almost be willing to accept that very thing for my amendment.

Mr. Callaway of Madison: Mr. President and Gentlemen of the convention, it is perhaps more a question of privilege to which I rise than anything else. It seems to me from my recollection of what has occurred in this convention that we have moved back the wheels of time at least two days. On Saturday when this question was discussed pro and con by able members of this convention, a motion was made to adopt this section, and in order to close the debate upon that question I made a motion to reconsider the vote by which it was adopted, and upon that motion moved to lay upon the table. That was carried by a vote of 36 to 31 I believe. I submit to you now, as a matter of recollection, as a matter of the part of the history of this convention, that when we left here Saturday forenoon every gentleman in this convention of the 75—there were three or four absent—understood that the proposition which we are now discussing, with the whole article itself, had been adopted by the ayes and nays of this convention. I remember too, as a fact, that after its adoption it was referred for the purpose of being printed, and sent to the Committee of Engrossment. Now, why gentlemen who oppose this measure as they do, and who speak so warmly against it, have taken this dodge in relation to the matter, I think can be readily understood. I admire the candor; I admire the manner in which the gentleman from Lewis & Clarke, Governor Carpenter, has addressed this convention. If he has reasoned upon principle, why he should oppose measures adopted in this convention, allow me to say to him and to you that I believe that this system that we are now proposing—this theory—is the best system of government ever instituted among men. The honorable gentleman from Lewis & Clarke, Mr. Toole, the other day said that we should institute a government, Republican in form, and from his illustration he seemed to believe that if we had only one senator from each county it was not Republican in form. My mind ran back over history, and I thought of George Washington and Benjamin Franklin and Alexander Hamilton and Randolph and James Madison, and I wondered when they came to form a Constitution whether they knew they were forming one Republican in form. I wondered again to myself that after I had lived my fifty-four years of life that I had been living all the time under a government not Republican in form. So far as this constitution is concerned, let me say to the gentlemen, we cannot improve upon it as our fathers made it. Why, one of the first things that these seventy-five gentlemen did in this convention upon the motion of the honorable gentleman from Silver Bow, Mr. Dixon, was that in order to comply with the Enabling Act, each of us came in here and held up our hands and swore under our oaths. "That we do hereby adopt the constitution of the United States." That was not the constitution made by this state only. I know the great conflict they had there. You all heard it—"we, the people of the United States in order to form a more perfect union, establish justice, insure domestic tranquility have ordained this Constitution for the United States of America." We simply say in this, "we, the people of Montana, do ordain this constitution for the people of Montana." The same figure, the same idea. Now all we are asking is that these small cow counties, as you may call them—these lesser communities—may be allowed to say here, "We do not propose to be swamped by those who have a majority." I have no grievance to speak of; I have asked for no office; but you know and I know that two or three, when they get into a convention, "We will take this and go home and help ourselves." It is a check upon the popular body, and we ask it as a matter of right, as a matter of principle, as the best form of government that is yet, and that is all we do ask.

Mr. J. K. Toole of Lewis & Clarke: I advocated as warmly as I knew how the other day what I considered to be popular government, and I know that I did it just about as well as I knew how to do it. I know another thing. I know that I am beaten and I am not eating any sour grapes. I propose to vote for this constitution just as it is. (Applause).

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Craven) and a vote being taken the same was declared lost.

Mr. Myers, of Yellowstone: I move we take a recess until eight o'clock.

Mr. Burleigh, of Custer: I move that Proposition No. 28 be put upon its final passage.

Mr. Myers, of Yellowstone. I will withdraw my motion

Mr. Middleton, of Custer. If the gentleman will withdraw his motion, Mr President, I would move you that Sections No. 13 and 14 of the original proposition as it was printed be numbered 9 and 10.

The President If there be no objection, Sections 13 and 14 will be numbered 9 and 10 The question now is upon the adoption of Section 14.

The Chair put the question upon the adoption of Section 14, and a vote being taken the same was declared carried

Mr. Hickman, of Madison: In line one of Section two the word "the" occurs where it ought to be, in my opinion, the word "this". I move a motion to substitute the word "this".

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Madison, Mr. Hickman, and a vote being taken the same was declared carried.

Mr. J. K. Toole, of Lewis & Clarke: I move to strike out Section 2.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, Mr Toole, and a vote being taken the same was declared carried.

Mr. Burleigh, of Custer: I now move that the Proposition No. 28 be put upon its final passage

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer, Mr. Burleigh, and a vote being taken the same was declared carried.

The President: The question now is upon the adoption of Proposition No. 28 as amended The Clerk will call the roll and the ayes and nays will be entered upon the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes. Aiken, Bickford, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. B.; Burns A. J.; Burns, Edwards; Callaway, Carpenter, Cauby. Chessman, Collins, Conrad, Cooper, Courtney, Craven, Dixon, Dyer, Eaton, Fields, Gibson, Goddard, Hammond, Hartman, Hatch, Hershfield, Hickman, Hobson, Hogan, Joyes, Kanouse, Kennedy, Knippenberg, Knowles, Loud, Luce, Maginnis, Marrion, Marshall, Mayger, Middleton, Mitchell, Myers, Reek, Rotwitt, Sargent, Stapleton, Toole, J. R., Warren, Watson, Whitehill, Winston, Witter, Mr. President—57

Nays None.

Absent: Brazleton, Cardwell, Durfee, Gaylord, Gillette, Graves, Haskell, Joy, Kohrs, McAdow, Muth, Parberry, Ramsdell, Robinson, Rickards, Schmidt, Toole, Jos. K—18.

The Chair announced the vote and declared Proposition No. 28 adopted as part of the constitution of the State of Montana.

Said Proposition No. 28 was then sent to the Engrossing and Enrolling Committee.

Mr. Burleigh, of Custer: I now move that the convention take a recess until eight o'clock this evening.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer, Mr. Burleigh, and a vote being taken the same was declared carried.

The convention took a recess until eight o'clock P. M.

August 5th, 1889. Evening Session.

The convention was called to order by the President at eight P. M.

The Clerk called the roll.

The President: Mr. McAdow, of Fergus, desires leave of absence for the day. If there be no objection he will be excused.

Mr. Warren, of Silver Bow: I move that the convention go into Committee of the Whole for the consideration of Proposition No. 33, General File No. 29, Ordinances.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow, Mr. Warren, and a vote being taken the same was declared carried.

The Chair invited Mr. Marrion, of Missoula, to the Chair.

Mr. Marrion, of Missoula, begged to be excused.

The President called Mr. Kennedy, of Missoula, to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Kennedy, of Missoula, in the Chair.

The Chairman: The Clerk will read Section 1 of Proposition No. 33 on Ordinances.

The Clerk read Section 1 of Proposition No. 33 as follows: "Ordinances. Be it ordained. First, that an election shall be held throughout the State of Montana on the first Tuesday of October, for the ratification or rejection of the constitution framed and adopted by this convention."

Mr. Middleton, of Custer: I move that when the committee rise it report the Proposition No. 33 with the recommendation that it be made a special order for Thursday at ten o'clock. It is a mater of ordinances, and it seems to me, one of the last things to come up and will necessarily be hinged more or less on what the constitution itself is, and I don't think it ought to be considered at this time.

The motion was seconded.

The Chair stated the motion.

Mr. J. K. Toole, of Lewis & Clarke: I would like to move an amendment, that it be put at the foot of the calendar, and that it be the last proposition considered.

The amendment was seconded.

Mr. Warren, of Silver Bow: In connection with this matter, I would say that looking Proposition No. 33 over, it provides for the retiring of every officer in this Territory and for new officers to be elected, and it is probably one of the questions that we are likely to have a little scrap over; I think it ought to be taken up at this time.

Mr. J. R. Toole, of Deer Lodge: I think the gentleman from Silver Bow has stated a very good reason why we should put this for the last thing on the file during the session of this convention. We have had scraps enough certainly during the last two days, and don't want anything that will create a scrap. I think, furthermore, that this being one of the propositions containing the ordinances, that we will find that some amendments are necessary to this ordinance. For that reason, I think it would be wise and expedient to postpone it for the last thing on the file.

Mr. Middleton, of Custer: I will accept the amendment of the gentleman from Lewis & Clarke, Mr. Toole.

The Chairman: The gentleman from Custer accepts the amendment of the gentleman from Lewis & Clarke.

The Chair put the question on the motion of the gentleman from Custer, Mr. Middleton, as amended on the motion of the gentleman from Lewis & Clarke, Mr. Toole, and a vote being taken the same was declared carried.

Mr. Loud, of Custer: I move that the committee now rise.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer, Mr. Loud, and a vote being taken the same was declared carried.

The Chair declared the committee dissolved.

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

Mr. Middleton, of Custer: I move you that the convention now resolve itself into Committee of the Whole for the consideration of general orders.

The President: If the gentleman will withhold his motion for a moment, the convention will hear the report of the Chairman of the Committee of the Whole.

Mr. Kennedy, of Missoula: The Committee of the Whole have had under consideration Proposition No. 33, Article on Ordinances, and have requested me to report the same back, with the recommendation that it be placed at the foot of the calendar.

The President: The Chairman of the Committee of the Whole reports that the Committee of the Whole have had under consideration Proposition No. 33, and report the same back to the convention with the recommendation that it be placed at the foot of the calendar

Mr. Eaton, of Park: I move that the report be received and adopted.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Park, Mr. Eaton, and a vote being taken the same was declared carried.

Mr. Middleton, of Custer: Now, Mr. President, I renew my motion that the convention resolve itself into Committee of the Whole for the consideration of General Orders.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer, Mr. Middleton, and a vote being taken the same was declared carried.

The President: The convention will now resolve itself into Committee of the Whole. The gentleman from Missoula will resume the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Kennedy, of Missoula, in the Chair.

The committee was called to order.

The Chairman: The Chair desires to be informed what is the next proposition on the general file.

Mr. Witter, of Beaverhead: I move that we take up Proposition No. 23, Article on Public Lands and Exemptions.

The motion was seconded.

The Chairman: The Chair is informed by the Clerk that there are several propositions that would form a part of this proposition on public lands that have been referred to the Committee on Printing, to be printed, and that they have not yet been returned by that committee, and until their return it would not be in order to take up this proposition.

Mr. Burleigh, of Custer: I move we take up Proposition No. 24.

The Chairman: If there are no objections, Proposition No. 24, article on Municipal Corporations and Officers will be taken up, General Files Nos. 9, 10 and 20, are to be considered in connection with this article. The Clerk will read Section one of the article.

The Clerk read as follows: "Section 1. The several counties of the Territory of Montana, as they shall exist at the time of the admission of the State into the Union, are hereby declared to be the counties of the State until otherwise established or changed by law."

There being no amendment to Section 1, the Clerk read Section 2 as follows: "Sec. 2. The Legislative Assembly shall have no power to remove the county seat of any county; but the same shall be provided for by general law, and no county seat shall be removed, unless a majority of the qualified electors of the county, voting on a proposition at a general election vote therefor; but no such proposition shall be submitted oftener than once in four years, and no person shall vote on such proposition who shall not have resided in the county six months, and in the election precinct ninety days next preceding such election."

Mr. Luce, of Gallatin: I move to strike out the words "a majority" in line 3, and insert in lieu thereof "two-thirds".

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Gallatin, Mr. Luce, and a vote being taken the same was declared lost.

Mr. Bickford, of Missoula: Believing that it is already provided for, I would move you, sir, to strike out after the word "years" in line 4 of Section 2, the words "and no person shall vote on such proposition who shall not have resided in the county six months, and in the election precinct ninety days next preceding such election." I think that is already provided for in another part of the Constitution wherein the qualification of electors are prescribed.

Mr. Clark, of Silver Bow: I would like to ask the gentleman where it is.

Mr. Bickford, of Missoula: In that section which prescribes the qualifications of electors.

Mr. Marshall, of Missoula: There is no provision that a voter shall live six months in the county in which he votes.

Mr. Bickford, of Missoula: If I am wrong, I will withdraw the motion.

Mr. Clark, of Silver Bow: I am of the opinion that the section the gentleman refers to provides that an elector shall reside in the county thirty days only. I am in favor of the proposition that no one shall vote upon that subject who has not resided in the county at least six months.

The Chairman: The gentleman from Park offers an amendment which does not seem germane to the amendment of the gentleman from Missoula, so the Chair will put the amendment of the gentleman from Missoula, which is to strike out in line 4 all words after the word "years" to the end of the section.

Mr. J. K. Toole, of Lewis & Clarke: I think the gentleman from Missoula is correct on that proposition. In looking over Proposition No. 14 I see the statement first, "That he shall have resided in the state one year immediately preceding the election at which he offers to vote, and in the county, town, or precinct such time as may be prescribed by law."

Mr. Whitehill, of Deer Lodge: Whether or not it is provided for, it is in conflict with Section 2 of Proposition No. 14, for it says that every man is entitled to vote at all general elections. This moving of a county seat must be at a general election, and Proposition No. 14 prescribes what are the qualifications of voters at general elections, and that is evidently in conflict with that and should be stricken out.

The Chair put the question on the motion of the gentleman from Missoula, Mr. Bickford, and a vote being taken the same was declared carried.

Mr. Fields, of Park: I will withdraw my amendment.

The Chair: The gentleman from Park withdraws his amendment. Are there any further amendments?

Mr. Carpenter, of Lewis & Clarke: I move to strike out all of lines 3 and 4 beginning with the word "voting" on line 3, down to and including the word "therefor" on line 4; and inserting in place thereof the words "at a general election on a proposition to remove the county seat, shall vote therefor."

The motion was seconded.

Mr. Carpenter, of Lewis & Clarke: I do that merely because this is very indefinite.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, Mr. Carpenter, and a vote being taken the same was declared carried.

Mr. Rickards, of Silver Bow: I move the adoption of Section 2 as amended.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Rickards), and a vote being taken the same was declared carried.

There being no further amendments to Section 2, the Clerk read Section 3, as follows: "Sec. 3. That the Legislative Assembly shall provide by general law the manner in which a part of any county may be stricken from such county and added to another county, or formed into a new county."

Mr. Whitehill, of Deer Lodge: I move that section be stricken out.

The motion was seconded.

Mr. Bickford, of Missoula: As an amendment to the motion, I move you to strike out the word "general" in line 1 of the section.

The amendment was seconded.

The Chair stated the motion of the gentleman from Missoula.

Mr. Goddard, of Yellowstone: I believe that we have adopted a proposition to go into the constitution which provides that a matter of this kind could not be done at a special election, so that if you strike out the word "general" in that section, then it would have to be by a special election, and the other proposition would be in conflict with it, and I am in favor of striking out the entire section, as proposed.

Mr. Whitehill, of Deer Lodge: My idea of striking out that section is this. It is an absurd proposition to have here. How in the world are we here to compel the Legislature to do anything? Our object here is to make fundamental law, and to place limitations upon the Legislature. We can tell the Legislature what it shall not do, but that we shall put something in here saying that they shall do something, and must do something, is absurd; that is forcing them. We cannot mandamus them to do a thing that they do not want to do, and without this section they have a perfect right to everything that is incorporated here, and I say it means nothing. The books are full of decisions on this proposition, that our business here is to make fundamental propositions, if we please, or to legislate; but we cannot tell any other body that they must legislate, and so I say this section is nonsensical and means nothing. The Legislature can do that without it, and will do it.

The Chair put the question on the motion of the gentleman from Missoula, Mr. Bickford, and a vote being taken the same was declared lost.

The Chair: The question recurs upon the motion of the gentleman from Deer Lodge to strike out the entire section.

Mr. Collins, of Cascade: I hope this motion will not prevail. Simply because I believe that if you strike out the section, then the Legislature will not have power to take off any portion of one county and add it to another. We have provided heretofore that this legislative power can only be had by general law, and if we do not provide in this constitution that this particular thing can be done, then I believe that the Legislature would not have the power. I think that is the idea of this committee in putting it in here.

Mr. Whitehill, of Deer Lodge: I do not like to be obliged to read law books here, but this thing has been settled so often and so frequently by decisions of the court that I would like to read a few sections in this book by Cooley on Constitutional Limitations.

(The gentleman read extracts from said book.)

We are here for the purpose of placing restrictions upon the Legislature, not for the purpose of telling the Legislature what they shall do, or what they must do. As I say, we authorize them and say they shall make provision for this matter, and there is no mode of compelling them to do it unless they see fit to do it themselves. A court cannot compel them, and if the Legislature refuses to do anything, when we say they shall do it, why, there you are powerless again. The legislative department is not made specially for the exercise of specified powers; but it is entrusted with the general power to make laws at their discretion.

(Here the gentleman read further extracts from Cooley on Constitutional Limitations.)

We are here to place limitations upon the Legislature Now, the books are full of just such passages as those I have read in regard to this matter of telling the Legislature that they shall or must do this or that. You cannot compel them The Legislature have this power, and undoubtedly will pass such laws as are necessary I say that this is just simply a useless section, and for that reason I am perfectly willing that the Legislature shall do all of this, but they have that power now, and for that reason, I say, we do not want to build up our constitution with silly propositions which have no meaning and no force, and can have no force. For that reason I think it ought to be stricken out

The Chair put the question on the said motion of the gentleman from Deer Lodge, to strike out the section, and a vote being taken the same was declared carried.

The Clerk read Section 4, as follows: "Sec. 4. In all cases of the establishment of a new county, it shall be held to pay its ratable proportion of all then existing liabilities of the county or counties from which it is formed, less the ratable proportion of the value of the county buildings and property of the county or counties from which it is formed."

Mr. Conrad, of Choteau: I would like to have read in connection with this General File No. 20, Resolution No. 14.

The Chairman: The gentleman asks that Resolution No. 14, General File No. 20, a proposition the Chair believes that was submitted by the gentleman for incorporation into the constitution, be read with this section.

The Clerk read the resolution as follows: "Resolved, that there shall be no new counties established unless the assessed valuation within the limits or boundaries described for the proposed county shall be $3,000,000 or more. No territory shall be taken from any county whereby it would leave said county with less than $4,000,000 of assessed property."

The Clerk also read the history of the said proposition, as follows: "Resolution No. 14 by Conrad, General File No. 20. Establishment of New Counties. July 11th. received, read and referred to Committee No. 10 on City, County and Town Organizations. July 19th, referred back without recommendation."

Mr. Bickford, of Missoula: I move you, Mr. Chairman, that it be added to Secton 4 as a proviso.

The motion was seconded.

The Chair stated the motion.

Mr. Collins, of Cascade: I hope the committee will seriously consider this matter. If you put this in the constitution, it will stop the Legislature from doing anything in the matter of organizing new counties for a great number of years, and I do not believe this constitution can afford to say that. We have three counties in this Territory that comprise one-half of its area. One of the counties is divided in two by the Missouri River, and the portion of it on the north side is rapidly settling up, and by next year will certainly be entitled to a county government, and if you pass this piece of legislation you will stop that. In the early days, and only a few years ago too, a majority of the counties in Montana did not have $3,000,000 or $2,000,000 assessed valuation. I remember the great county of Meagher about sixteen years ago had an assessed valuation of $600,000 and got along very well. That is as complete a county government as any in the territory, and paid its expenses and paid its debt. The great county of Lewis & Clarke a few years ago only had an assessed valuation of $3,500,000, and if you put this in your constitution you will block the wheels right here and say to the people of Montana and this legislature, you have sixteen counties and you shall have no more. If you provide this you say that instead of a $3,000,000 valuation the county cannot be divided until it has $6,000,000 of assessed valuation. It is legislation to begin with, and if it was fundamental law, it is not the place here.

Mr. Conrad of Choteau: I think we ought to have some consideration for the taxpayers of Montana. Now, the gentleman goes on and says there is a portion of the territory divided by the Missouri River, meaning Dawson county. The gentleman on this floor, Mr. Haskell, who assessed that county last year found $200,000 of assessed valuation outside of the Manitoba Railroad. Now, any gentleman on this floor knows that a county government cannot be run on an assessed valuation of less than $2,000,000, which would make about $27,000. You hold four terms of District Court out of that, which you have provided for. I have been a member of the Board of County Commissioners, and I know something about the matter. Now, where is the money coming from unless you have $3,000,000 of assessable property to pay the mining expenses; and the people who have property in this country are entitled to some consideration and ought not to be taxed to death by men who want office. At each session of the Legislature there are a lot of lobbyists around here that want new counties. Some want to be sheriff, some treasurers, and so on, and if you put a clause in here putting some amount of taxable property, by which amount it cannot be created and without that amount of taxable property it cannot be created, they cannot come around here. I think that the proviso ought to be put in there.

Mr. Maginnis, of Lewis & Clarke: I rise to explain the position taken by the gentleman from Cascade. I hope that this provision will not be put in the constitution. I hope to see the day, in a short time when there will be fifty counties in this state. I believe in small counties, and I believe their affairs are economically conducted. I believe their officers are closer to the people. I have known when the counties of this territory were small and their assessed valuation was small, and I believe the county governments were then better conducted. I believe it is the tendency of large and wealthy counties to create extravagance. Yes, to create the demand for great public buildings and extravagance in other ways. I think that any one ought to be able to go to his county seat in one day;

and it would be better if he could go there and back in one day. I believe the counties ought to be so small that there would be a general unity of interest and not a conflict as there is in our counties between different sections of the country. There never has been a county created except after a struggle in the Legislature, and there never has been a county created that was not rightfully created: and this county of Dawson had to be created by an act of Congress—the only county in the United States, I believe that was so created—because its formation was unjustly opposed by interested people. I think we may safely leave this matter to the Legislature, and I believe it will be for the interest of the territory, and for its welfare to have smaller counties, and allow the people more latitude in making them In these big counties outlawry always exists away from the county centre. Every new county seat is a new centre of growth and development and a new government, and I hope the provision will not prevail.

Mr. Ramsdell, of Missoula. It seems to me that this is an iron clad provision here that is not wanted. I am speaking for my own section of the country, although we are not ambitious at present to slice the large county of Missoula into three pieces, but no doubt at some early day steps will be taken to accomplish this, yet I think the people of that section of the country would look with disfavor upon the passage of that provision. I believe the Legislature of Montana is sufficiently intelligent and practical to at all times cope with this question; and if the people of any section are desirous of forming a new county, and can advance intelligent reasons, notwithstanding the fact that there are always office-seekers anxious for those offices, I believe it would be better to allow the people that choice; and although as I say, the people of our county are not anxious at this time to divide that new country, yet I have no doubt that in the near future as the railroad development progresses that the step will be taken, and I think it can be taken with justice to all.

Mr. Browne of Choteau· I am opposed to this matter being in the constitution. I think it is a matter for the Legislature.

Mr. Conrad of Choteau· A gentleman on this floor has presented a resolution that the state assume the debts of each county, and if the state had to assume the debts of these counties, it is my opinon that they would be less anxious to divide these counties and make new ones of them, when they are wholly and absolutely unable to take care of themselves. It is nonsense right at the beginning to allow these counties to put on the garments of independent government before they are able to wear the swaddling clothes of infancy. Now, if they have enough assessable property to commence with, there would be no taxes created that the people would not be willing and able to bear. I know in our county where the assessed valuation is $2,800,000, we have a debt over $100,000. After paying the interest on that, and the county expenses for this year we will run behind $3,000. That is why I put the limit in there.

Mr Haskell of Dawson. In connection with this Propositon No 24, I ask that the Clerk read a petition that is on file from the residents of Glasgow, Dawson County, to be considered with this

The Clerk read the said petition, signed by numerous citizens of Dawson County, petitioning the convention not to take favorable action on the Conrad Resolution.

Mr. Haskell of Dawson· Now, so far as that concerns Proposition No. 24, or the amendment offered to it by Mr. Conrad, I am of the opinion that that oought to be divided. Now, the county of Dawson is nearly 235 miles in length, and north of the Missouri River it is over 200 miles wide. Now, if this proposition is incorporated as an amendment to Proposition No. 24, it would certainly be at least ten years before you would be able to obtain a division of the County of Dawson. Now, they have a railroad running through the northern part of that county for 209 miles. The assessed valuation of that at a fair cash value would be at least $1,000,000

Mr. Conrad of Choteau. How much assessed property do you find outside of the railroad? I believe you told me.

Mr. Haskell of Dawson: If I am to answer such a proposition as that I will lose my case (Laughter); I do not propose to answer it. Now, I venture to say that North of the Missouri River there will be personal property this year to the amount of $100,000. Now, with the incoming immigration that will come in here this year that will undoubtedly have a population inside of twelve months of 2,000, and it is no more than justice to those people who knock at the doors of this convention to grant them that which they ask, and that is, that this provision introduced by Mr. Conrad shall not be incorporated as a part of the fundamental law. I say it will be an act of justice to those people who live over there. You take it, as they allege in that appeal to this convention, that they are obliged to travel a distance of 225 to 230 miles to get to the county seat. Now, I beg you gentlemen to consider that proposition fairly. It is a matter of equity and justice, although it may not be doing an act of justice to some of the other counties. Suppose we had a criminal case come up; it would cost us at least a matter of $500 to try it, as the county seat is now located in the southern part of the county. In an air line it is 230 miles, but the only way you can reach it by railroad is by going into Dakota up to Fort Buford. Those people at Glendive appeal to us for justice. As the law now stands we are unable to give it to them, except to give them a justice of the peace, and in my judgment, it will be a great saving to all of the people in that part of the territory, when the county can be divided. It would be no more than justice to that part of the county of Dawson lying south of the Missouri River, and also to the North. The gentleman from Choteau, Mr. Conrad, understands the situation just as well as I do. He probably is acquainted with a great number of those people, and in my judgment this proposition of Mr. Conrad's ought not to be incorporated into the constitution, not on the ground that it would be only doing an act of equity and justice to us to divide our county, but because in my humble judgment it is purely legislative matter; and as this convention has already taken the ground that we propose to stop so far as incorporating legislative matter is concerned in this constitution, I ask the convention to draw the line here now, and say to these people who have petitioned this convention that this clause shall not be incorporated.

Mr. Conrad of Choteau: I would just say for the information of the convention that Glasgow is the end of a division of the railroad, and I see that there are 65 signatures to this petition. Now, Mr. Haskell knows as well as I do that there are no more than forty people living there outside of the employes.

Mr Haskell of Dawson: Although that may be true, I recollect that there were more than 100 Democratic votes cast against me in that precinct last year (Laughter). I also found 90 of them sleeping there this year.

Mr. Goddard, of Yellowstone: I do not like to take issue with my colleague from Dawson county, but I believe I am bound to do it sometime. He makes the statement here, that if he tells the truth, and the whole truth in relation to this matter, that it will defeat this proposition and he will lose his case. Now, I look upon this proposition as a matter of equity and justice to the people who live in the county to be created. Certainly no people living in any section of Montana ought to have a government of a county saddled upon them unless they are in a position to afford it, and certainly this constitutional provision would not bar them of that right. simply because the resolution offered by the gentleman provides that before a county shall be created they shall have an assessable value of $3,000,000. It has been demonstrated in every new county that has been organized in this territory since its existence that a county cannot start its courts and the machinery of government on a cent less than $3,000,000 of assessed valuation. Now, then it is not fair, if there should happen to be a town of 400 or 500 inhabitants located in one corner of the county, to satisfy the ambition of a few men to create a county for the purpose of getting office, to saddle a debt upon them for the purpose of carrying on a government in their county, and not only that but under this provision in the constitution, which I presume will be adopted in section 1, it provides that they shall assume their portion of the indebtedness of the old county, which is double the amount of the cost of the permanent buildings. So that nearly every county in the territory—nearly every one of these large counties in area are more or less in debt and to create a new county, for instance in the county of Dawson over at Glasgow would saddle upon the people of that section of the country a debt. Certainly those people down there have a right to say what they want about this matter, but I am inclined to think with the gentleman from Choteau that a great majority of the persons who signed that petition are not property holders and pay no taxes in that county. I recognize the fact that the gentleman says there were about that many votes against him there on the Democratic side; but I recognize the fact to be true further, that that has been the history of Montana ever since its organization, that a number of men have voted the Democratic ticket, and I may say that some of them have voted the Republican ticket who have no interest in common with the people who live in the county in which they vote; who pay not a dollar of taxes in the county; and I don't believe that the county ought to undertake to bear the responsibility of a government until the taxpayers of the county say they are entitled to it and demand it; and I shall support the proposition of the gentleman from Choteau upon this principle, that no county shall be created until they are ready to assume the government of a county and until they can pay the expenses. Now, when Yellowstone County was created out of Custer County, there was a large indebtedness in Custer County. Yellowstone County had to assume about $50,000 of that indebtedness, and I have an idea that about $49,000 of that is unjust; but be that as it may, it has placed a burden upon Yellowstone County that it will not be rid of for many years to come. For these reasons I shall support the proposition.

Mr. Burleigh of Custer. I agree with the gentleman who spoke here in the main upon several topics advanced here, but one reason why I am opposed to this amendment is that this is a matter within the exclusive province of the Legislature, in my judgment, and I think the Legislature can be safely entrusted to examine the matter when it comes before them and act intelligently, as they will honestly, in the premises. They will determine whether it is necessary to create a new county, or whether it is not; whether the interests of the people demand a new county or whether they do not. Now, I for one, maintain that small counties, as suggested by my friend, Major Maginnis, are much more economically administered so far as their affairs are concerned than a large county, even with the same number of officers and with the same resources. Now, my friend from Yellowstone County has alluded to the indebtedness of Custer County, and to having broken away from the bonds of the parental authority down there and set up housekeeping for themselves, and he says they assumed $50,000 of indebtedness, $49,000 of which he believes to be unjust. Now, I will tell you just how this indebtedness occurred. It came in consequence of having a county almost as large as the six New England States, the sheriff's fees, the witnesses' fees and the jury fees absorbed everything. Why, I have known a single term of court of Custer County, when it ran clear to the British lines or nearly there, to cost $27,500. After getting rid of Dawson County, and a cheerful parting with our friend from Yellowstone County, the expense began to come down and the last term of court cost less than $3,000. Now. there is economy in having small county governments to administer, and the smaller the county is the less the expense. I care nothing about the population, and I care nothing about the wealth of the county. When you come to take a county that requires you to send a sheriff and his deputies two or three or four hundred miles to serve processes, to bring witnesses into court, to get jurors and everything of that kind, you have shouldered a liability that would swamp any county in the country Now, I don't believe there is any danger in entrusting this thing to the Legislature I have a great deal of confidence in a Montana Legislature even, and I believe that when they come to consider this matter, they will do it fairly, dispassionately and with a view to justice and economy. Now, I am not one of those men who are so distrustful of my fellow-man as some men are. Perhaps I have more faith than some of them I certainly have more than my friend who addressed us this evening, and to whatever annoyances we have been subjected heretofore, we are all right now. The citizens of Montana have gone to Botany Bay, and have imported a system of voting that is a panacea for all of our political wounds and a good deal more. I hope the motion of the gentleman from Choteau County will not prevail. I do not think it is proper to put his resolution in the constitution. I think it is a proper matter to leave within the control of the Legislature, and the Legislature only; and while a great deal has been said about there not being anything north of the Missouri River I have been over every mile of that country there, and it is as fine a grain growing country as there is in the world, and having become opened up, and the Manitoba Railroad going through there, it is going to be a populous, densely settled country. It is only a question of time when it will be necessary to admit them to the privileges of a new county government, because if they are going to maintain their county seat at Glendive, it could not help them, there will be nothing left of it. In regard to the population there now I know nothing about it; but as my friend remarked when this little question came up in regard to the number of people over there that there was one hundred Democratic votes polled against him, I will say that I have no doubt of that; I would not be surprised if there were 200. The country has experienced some phenomenal towns over that way—Wilder's Landing and Tolley's Ranch. I hope the motion will not prevail.

Mr. Rickards of Silver Bow: I wish to add my protest to those who have already spoken against the adoption of this resolution. I quite agree with Mr. Goddard. I believe that a county government should not be forced upon the people until they want it; but I believe the Legislative Assembly is as competent to judge of the wants or needs of a certain section of this territory or state as this Constitutional Convention, and I am opposed to incorporating anythng in our constitution of this character. I want to say, too, in view of our action here last Saturday, that if we are going to adopt a proviso of this character, at all, I would rather favor $12,000,000 than $3.000,000 so as to make it practically impossible to ever have a new county in Montana.

The Chairman: The question is upon the adoption of General File No. 20, the resolution offered by the gentleman from Choteau, which has been referred back to the Committee on City, County and Town Organizations without recommendation, and which it is moved to place at the end of Section 4 of Article 24 as a proviso.

Mr. Hobson of Fergus sent up an amendment

The Chairman: The gentleman moves a second proviso that nothing in this section shall prevent the readjustment of county lines between existing counties.

The motion was seconded.

Mr. Conrad of Choteau: I believe that is an amendment to the amendment, and I will accept that.

The Chairman: The gentleman from Choteau accepts this amendment to his resolution.

The Chair put the question on the motion to adopt the resolution offered by Mr. Conrad of Choteau. and a vote being taken the same was declared lost.

Mr. Hobson of Fergus: I would like to renew my amendment and have the proviso attached to the printed section.

The Chairman: The gentleman from Fergus desires to renew his amendment to the printed section as follows: "Provided that nothing in this section shall prevent the readjustment of county lines between existing counties."

Mr. Burleigh, of Custer: I move the adoption of that proviso.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer, Mr. Burleigh, and the same was declared carried.

Mr. Hogan, of Silver Bow: I move that the section be adopted as amended.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow, Mr. Hogan, and a vote being taken the same was declared carried.

There being no further amendments to Section 4, the Clerk read Section 5 as follows: "Sec. 5. When any part of a county is stricken from one or more counties and attached to another, the county to which such part is attached shall be liable to pay the ratable proportion of such part of all then existing liabilities of the county or counties from which such part is taken, less the ratable proportion of the value of the county buildings and property of the county or counties from which such part is taken."

Mr. Maginnis of Lewis & Clarke: I move to strike out Section 5; it is purely legislation and ought to be left to the Legislature.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke, Mr. Maginnis, and a vote being taken the same was declared carried.

The Clerk read Section 6 as follows:

"Sec 6. When any county formed from contiguous territory taken from older counties, or when any county to which territory shall be added or taken from, an adjoining county, shall fail to pay the proportion of indebtedness of such territory to the county or counties from which it is taken, then it may be lawful for the county from which such territory has been taken to recover from the county so failing to pay, by action at law, the proportion of indebtedness for which it shall be liable, as provided in the two proceding sections."

Mr. Clark of Silver Bow: I move to strike out Section 6.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow, Mr. Clark, and a vote being taken the same was declared carried.

Mr. Whitehill of Deer Lodge. I move that Sections 7 and 8 be stricken out for the same reason that Section 5 was stricken out.

The Chairman: The Clerk will read the section before any motions are received.

The Clerk read Section 7 as follows: "Sec. 7. The Legislative Assembly shall provide by law for the subdivision of the several counties of the State into townships, districts, or precincts, of convenient number and size."

Mr. Whitehill, of Deer Lodge: I renew my motion to strike out Section 7

The motion was seconded

Mr. Clark, of Silver Bow: I would like to know how this matter is to be provided for if it is to be stricken out The Legislative Assembly should be empowered, it seems to me, to do this. There is no provision for it.

Mr. Whitehill, of Deer Lodge: Referring to the sections that I have read from the law books, they say that the power of the Legislature is absolute. The only limitation is wherever the constitution says they cannot do a thing. Now, I go further than any gentleman of this convention, and I do not propose to be shut up by the sneers of those who say that we have all the wisdom of this age and the age to come. This Legislature cannot pass any provision different from that; but I say we are coming in here and saying that the Legislature shall do so and so. Why, it is superfluous It has no business here, and the Legislature has a perfect right when they are not limited by us to pass any laws they see fit If it is for the good of the people to legislate on this matter they will do it, and if we state that they shall do this, that does not compel them if they see fit not to do it These sections are just encumbering our constitution with a lot of trash that has no force or effect whatever.

Mr. Luce, of Gallatin: I agree fully with the remarks of the gentleman from Deer Lodge. The convention, I suppose, does understand, and every lawyer understands the difference between the constitution of the State and the constitution of the United States For instance, the constitution of the United States is that of delegated powers. It is the receptacle of the powers that have been granted to it by the States, and that is the limitation. Now, the power of the Legislature stands upon an entirely different basis The Congress of the United States must legislate within the powers granted to it by the States respectively, but the constitution of the State possesses plenary powers provided they are not in conflict with the powers that have been granted by the States to the United States For instance, we start out in every State constitution with the Bill of Rights, and reserve something to the people, but wherever those reservations are not made I think it has always been held that the Legislature has full power to legislate. Consequently, upon the division of the counties, it is not necessary to grant any power to the Legislature because it is not withheld from them anyway, that I know of, and not being withheld the power can be exercised. The power of the people of the Territory of Montana will hereafter be exercised by the Legislature of the State of Montana, so far as it has not been withheld or limited by this constitution. That is the way I understand it, and I think that the gentleman from Deer Lodge is perfectly right

The Chairman: The question is upon the motion to strike out Section 7.

The Chair put the question on the said motion of the gentleman from Deer Lodge, Mr. Whitehill, and a vote being taken the same was declared carried.

Mr. Whitehill, of Deer Lodge: I move that the reading of Section 8 be dispensed with, and that it be stricken out.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Deer Lodge, Mr. Whitehill, and a vote being taken the same was declared carried.

The Clerk read Section 9 as follows: "Sec. 9. In each county there shall be elected three County Commissioners, who shall compose the Board of County Commissioners, and who shall hold sessions for the transaction of county business as provided by law, and any two of whom shall constitute a quorum for the transaction of business. The board shall elect one of its members chairman."

Mr. Warren, of Silver Bow: I move an amendment to Section 9.

The Chairman: The gentleman from Silver Bow moves to amend Section 9 by adding the following: "Provided that all county and township officers now holding office in the Territory of Montana, or in any county or township of said Territory, are hereby declared to be officers in the respective counties or townships of the State of Montana until the general election for congressmen in the year 1890, shall elect their successors, and thereafter until their successors shall qualify."

Mr. Warren, of Silver Bow: I move the adoption of that amendment.

The motion was seconded.

Mr. Goddard, of Yellowstone: I would suggest simply to the gentleman who introduced the amendment that he excepts out of that amendment the Probate Judge, as the Judiciary Act has provided for the abolition of that office.

Mr. Warren, of Silver Bow: I accept that amendment.

The Chair stated the motion.

Mr. Rickards, of Silver Bow: I have no objection to the amendment as offered by Mr. Warren being considered on its merits; but I move to amend by striking out all of Section 9 after the word "Commissioners" in line 2.

The motion was seconded.

The Chair stated the motion.

Mr. Rickards, of Silver Bow: I will very briefly give my reasons for that. It seems to me superfluous. If my motion prevails, we have provided that the county shall have three County Commissioners, who shall compose the Board of County Commissioners. Now, the idea of going on to say that they shall hold sessions, and how many shall constitute a quorum, and when they shall elect their chairman, seems to me to be superfluous.

Mr. Whitehill, of Deer Lodge: I disagree with the gentleman as to its being superfluous. Where we want to legislate here, we can do it. It is purely legislation and it may be proper. It is well enough if we want to legislate on that subject for us to legislate and say they shall hold sessions for the transaction of business. We can say that here if we want to.

Mr. Goddard, of Yellowstone: Yes, but we don't want to.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Rickards, and a vote being taken the same was declared carried.

Mr. Warren, of Silver Bow: I will withdraw my amendment for the purpose of adding the same to Section 11 when it comes up.

Mr. Fields, of Park: I believe after the words "who shall compose the Board of County Commissioners", the words, "the Board of County Equalization" should go in. I think we provided the other day for a State Board of Equalization, and a County Board of Equalization, and the County Commissioners should comprise that board.

Mr. Bickford, of Missoula: I will ask the gentleman if that is not already provided for in another section.

Mr. Fields, of Park: I understand it is provided for, but it is mentioned here that the County Commissioners shall comprise the Board of County Commissioners, and if you put in the words "who shall compose the Board of County Commissioners", I don't see any reason why the Board of County Equalization should not be fixed also.

Mr. Bickford, of Missoula: I would suggest to the gentleman that that is provided for in the other section. The Board of County Commissioners, as I understand it, is the Board of Equalization, and they have a special term for sitting as the Board of Equalization.

The Clerk read Section 10 as follows: "Sec. 10. The term of office of the County Commissioners shall be four years, except as otherwise provided for in this constitution. At the first general election provided for by this constitution there shall be elected in each county three County Commissioners. The one receiving the highest number of votes shall hold his office until the general election in 1896; the one receiving the next highest number of votes shall hold his office until the general election in 1894, and the one receiving the lowest number of votes shall hold his office until the general election in 1892; and each shall hold his office until his successor is elected and qualified. A vacancy in the Board of County Commissioners shall be filled by appointment by the Governor."

Mr. Warren, of Silver Bow I move to amend Section 10 by inserting the words, "after the first general election provided for after the adoption of this constitution" instead of "After the first general election provided for by this constitution."

The motion was seconded.

The Chairman: The gentleman from Silver Bow moves to amend the section by adding after the word "for" in line 2, the words "after the adoption of" and striking out the word "by" in line 2.

Mr. Hartman, of Gallatin· I move as a substitute for the amendment to insert after the word "constitution" on line 3 the words "after its adoption", so that it will read "at the first general election provided for by this constitution after its adoption."

Mr. Warren, of Silver Bow. I will accept the substitute of the gentleman from Gallatin in place of the amendment offered by myself.

The Chairman: The gentleman from Silver Bow accepts the substitute offered by the gentleman from Gallatin in lieu thereof, amend Section 10 by inserting after the word "constitution" on line 3, the words "after its adoption." So that it will read "At the first general election provided for by this constitution after its adoption."

Mr Luce, of Gallatin: I cannot understand how that changes the sense of the reading of this section at all It reads now: "At the first general election provided for by this constitution after its adoption." It is no constitution until it is adopted.

Mr Hartman, of Gallatin. Mr. Chairman, I notice that the effect of my amendment is not what I intended it to be, and I therefore withdraw it.

The Chairman: The gentleman withdraws his amendment.

Mr. Cooper ,of Gallatin, sent up an amendment.

The Chairman The gentleman from Gallatin, Mr. Cooper, moves to strike out the last word in line 8, and insert in lieu thereof, "District Judge", so that the vacancy in the Board of County Commissioners instead of being filled by the Governor shall be filled by the District Judge.

The motion was seconded.

Mr. Clark, of Silver Bow: I would say in favor of the motion that I do not believe that the Governor ought to have anything to do with county affairs In the first place, the Governor is not qualified to select; he does not know the people, as a rule, in the counties, and he certainly is not qualified to select officers to do the business of the counties. Hence, I am opposed to any interference of that kind, and I believe that the Judge of the district or somebody else should do that. It will read if amended, "A vacancy in the Board of County Commissioners shall be filled by the District Judge." That is the way the section would read if amended. It takes it out of the hands of the Governor and delegates it to the District Judge.

The Chair put the question on the motion of the gentleman from Gallatin (Mr. Cooper), and a vote being taken the same was declared carried.

Mr. Collins, of Cascade, sent up an amendment

The Chairman. The gentleman from Cascade, Mr Collins, moves to strike out Section 10, and to add to Section 9 the following: "Whose term of office shall be two years, except as otherwise provided for in this constitution."

Mr. Clark, of Silver Bow: I move the adoption of that amendment.

The motion was seconded.

The Chairman: This motion is to strike out Section 10—the entire section—and to add to Section 9 the words "Whose term of office shall be two years, except as otherwise provided in this constitution."

Mr. Collins, of Cascade: It might be best to strike out everything else but the second sentence of Section 10, and add this to the two sentences, so that it would read as follows: "At the first general election provided for by this constitution there shall be elected three County Commissioners whose term of office shall be two years, except as provided for in this constitution."

The Chairman: The gentleman then moves to amend by inserting after the word "Commissioners" in line 3 of Section 10, the words, "whose term of office shall be two years, except as otherwise provided in this constitution."

Mr. Collins, of Cascade: My intention was to leave the last clause of Section 10 in, and insert this after the word "Commissioners" in line 3.

The Chairman: The section then as moved to be amended by the gentleman from Cascade would read, "At the first general election provided for by this constitution there shall be elected in each county three County Commissioners whose term of office shall be two years except as otherwise provided in this constitution. A vacancy in the Board of County Commissioners shall be filled by appointment of the District Judge."

Mr. Rickards, of Silver Bow: I move the adoption of the amendment of the gentleman from Cascade.

The motion was seconded.

The Chair stated the motion.

Mr. Collins, of Cascade: I wish to say that this represents the matter before the convention whether the term of office of the commissioners shall be two years or six years I am in favor of the short term. Gentlemen may say that the objection to this will be that a new Board of County Commissioners goes out every two years, and you are not liable to have an experienced man on the Board of Commissioners. Now, in my experience, I believe it is better to change the Board every two years than it is to allow one man to fill the position for six years and another for four years. That is too long. If there are any abuses in the Board it cannot be changed, and if there is a good man on the Board he will be elected The office of County Commissioners is a county office, and the term of that office, in my opinion, should not be more than any of the other county offices. The two horns of the dilemma are two years or six years, and, in my opinion, two years is far preferrable.

Mr. Burleigh, of Custer: I agree fully with the remarks of my friend from Cascade in regard to the office of the County Commissioners. I think I have seen the evil of electing gentlemen for six years, and as just remarked by him, if we get good men we can re-elect them. If we get bad men we cannot do anything but elect them for two years I told you they get a little scabby sometimes, and I am in favor of electing them for two years and trusting to luck to fill their positions.

Mr. J. R. Toole, of Deer Lodge. My experience with county matters and County Commissioners would certainly lead me to believe this is not a wise policy. I have noticed in coming in contact with County Commissioners, while in possession of county offices myself, that a new board of County Commissioners often consists of farmers or possibly miners, or men not familiar with the details of county work, and it takes them almost the whole of the first year to learn the routine of the business, and it is uphill work for them. If they hold out for two years, it is possible they may be re-elected, but the usual history is that after a man has served a term in a county office that he gets such a hauling over the coals that he is not anxious for the office afterwards. It is something unusual to find a Commissioner succeeding himself. It seems now that the provisions of this bill are wise. One goes out every two years. That leaves an old member at the helm all the time. A new man comes in; he is very soon initiated in the actual business of the office, and it makes the business of the board run more smoothly, more so than it would if you elected a new board every two years.

Mr. Burleigh, of Custer: I dislike very much to take up the time and attention of the convention; but the very reason that the gentleman assigns here for wanting to continue them for six years or four years is the very reason which I urge against it. Now, he says they learn the routine of the business. My experience has been that they learn it too effectually.

They get so after a while that they acquire this art of what we used to know when boys as presto change, that is, now you see it, now you don't. (Laughter) Now, a few years ago it became necessary in Custer County to bond its public indebtedness, and there was a law passed in this Legislature allowing the Commissioners to bond the outstanding indebtedness to the extent of $250,000 Well, the law provided that the bonds should not be sold at less than par. That was all right—that was the spirit with which they issued the authority to bond the indebtedness; but I discovered before I had been around the County Commissioner's office a long time that while they would live up to the law, they were going to pay a gentleman a percent for selling the bonds amounting to $17,500. There was one of these Boards of County Commissioners that had been in some time, and had acquired the very knowledge that my friend speaks of, and had acquired it so very effectually that we had to send to Bozeman, where the District Court was in session, and sue out an injunction. and it was the most ludicrous scene I ever witnessed. I happened to be the attorney for the taxpayers of the county, and went down there and ascertained that that day they had passed a resolution paying seven and a half per cent to a certain man there

Mr. Clark, of Silver Bow: He was not a banker.

Mr. Burleigh, of Custer: Not from Butte. I took a seat in the Probate Court and sent a man in there to see when they adopted the resolution, and he came in and told me they had just adopted the resolution to pay the $17,500 of percentage. I took the papers in and told him to serve them on the Chairman of the Board of Commissioners and on the Clerk, and I noticed that one of the Commissioners discovered it, and he was one of these men who had experience, he had acquired the art of business He went up to the Clerk and said he, "Charlie, has Burleigh injuncted us?" And the result was that this man who had learned a great deal of experience took away from the taxpayers of that county $17,500 I suppose he wanted it for the church. He was a churchman. However, I took it for granted that he was a good man, and he wanted it for some useful purpose. But I am opposed to letting men go in there and learn all the ways that are dark and the tricks that are vain.

Mr. J R. Toole, of Deer Lodge: I suppose we all realize the fact that this little affair in Custer County has doubtless distorted the focus of the gentleman, and has induced him to take the same pessimistic view of human nature. I admit that I don't have the impression of men that these officers are always waiting the chance to play the presto change game. That kind of people, Mr. Chairman, will play the game the first year they are there If people don't like them they get rid of them pretty quick, and I believe that the average citizen, at least on our side of the country, and this section of the country can be entrusted with the county affairs without that presto change business being carried on

The Chair put the question on the motion of the gentleman from Cascade, and a vote being taken the same was declared lost

Mr. Rickards, of Silver Bow: Allow me to ask, was the amendment itself lost in its entirety?

The Chairman: It was offered as one amendment, and the Chair put it as one.

Mr Rickards, of Silver Bow: I think I am in order, Mr Chairman, and I move to amend this section by striking out all of the first line to and including the word "constitution" and inserting after the word "constitution" in line 3, the words, as amended by Mr. Collins there. except insert "four" where he had "two" and strike out all of Section 9. I think, gentlemen of the committee, if you will look at this matter of amendment, you will see that Section 9 is really superfluous. Why are you providing that there shall be three County Commissioners in Section 9, and then provide the same thing in Section 10?

Mr. Collins, of Cascade: I move the committee rise and report progress and ask leave to sit again.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Cascade, Mr. Collins, and a vote being taken the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

Mr. Kennedy, of Missoula: Mr. President, the Committee of the Whole have had under consideration Proposition No. 24, article on Municipal Corporations and Officers, have made some progress, and ask leave to sit again.

The President: The Chairman of the Committee of the Whole reports that the committee have had under consideration Proposition No. 24, article on Municipal Corporations and Officers; that they have made some progress, and ask leave to sit again. If there be no objection, the report will be received and leave to sit again granted.

Mr. Burleigh, of Custer: I move the convention adjourn.

The motion was seconded.

The Chair put the question of the gentleman from Custer (Mr. Burleigh) and a vote being taken, the same was declared carried.

The convention then adjourned until Tuesday, August 6th, 1889, at ten A. M.

TWENTY-SEVENTH DAY.

Tuesday, August 6th, 1889.

The convention was called to order by the President at ten A. M.

The Clerk called the roll.

Mr. Chessman, of Lewis & Clarke: Mr. Mayger is not well today and desires to be excused.

The President: Mr. Mayger will be excused if there be no objection.

The Chair announced that there was no quorum present.

Mr. Burleigh, of Custer: I move the call of the house.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer, Mr. Burleigh, and a vote being taken the same was declared carried.

(Several members came in and occupied their seats.)

Mr. McAdow, of Fergus: I move to dispense with the future proceedings under the call.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Fergus, Mr. McAdow, and a vote being taken, the same was declared carried

The Clerk again called the roll.

The Chaplain offered prayer

The Clerk read the journal of the previous day.

Mr. J. R. Toole, of Deer Lodge, sent up a report of standing committee on Mining and Water Rights.

The President: The report of the Committee on Mining and Water Rights will be read.

The Clerk read as follows: Mr. President, your Committee on Mining, Water and Water Rights, to whom was referred Memorial No. 1, relating to the importation of lead ores from Mexico have had the same under consideration and ask leave to report the same back without recommendation.

(Signed) J. R. TOOLE, Chairman.

The President: What is the pleasure of the convention concerning this report?

Mr. Hershfield, of Lewis & Clarke: First, is a motion for its adoption in order? I move the adoption of the report.

Mr. Hogan, of Silver Bow: I move that the report of the committee be received and properly placed on file.

The motion was seconded.

Mr. Luce, of Gallatin: I move to amend that, that it be received, printed and be considered in connection with the article on Water and Water Rights

Mr. Warren, of Silver Bow: I object to any such filibustering with that resolution. It is not a resolution. It is a memorial.

The President: The gentleman from Gallatin moves that the report be received, the resolution printed and considered in Committee of the Whole with the proposition for article on Water and Water Rights.

Mr. Warren, of Silver Bow: I rise to a point of order in this matter. It is no proper matter to go into the constitution, and as I understand, it has no right to be considered by any committee. It was wrongfully committed to this committee.

The President. A motion to commit is always in order, and being the only motion before the convention, the Chair will put the motion.

The Chair put the motion

Mr. Hartman, of Gallatin: In view of the fact that I have understood from one of the members that they do not propose to make any report on this matter, I hope this motion will not prevail. I hope it will bury this matter.

Mr. Luce, of Gallatin: It is not my intention to bury this matter. It is my intenton to get it before the Committee of the Whole, or the convention. There must be some course taken to get it before the Committee of the Whole. Unless taken up with some proposition it cannot be considered in Committee of the Whole. I want to keep it alive so that we may consider it and discuss it, and do with it that which is proper to be done. It should go on the general file in some manner. I know of no other way

Mr. Hartman, of Gallatin: Is a motion to amend in order?

The President: A motion to amend is not in order.

Mr. Aiken, of Silver Bow: As this is a matter not to be reported in the constitution. I make a motion that that resolution be laid on the table.

Mr. Burleigh, of Custer: Mr. President, I would like to know what this memorial is. I just got "Mexico" in my ear, and I could not tell whether it was a scheme for the annexation of Mexico to the United States or what.

The Clerk read the memorial for the information of the gentleman.

Mr. Sargent, of Silver Bow: Mr. President, I move as an amendment that this memorial be adopted as the sense of this convention.

The motion was seconded.

Mr. Kennedy, of Missoula: I was just going to rise to a point of order, as to whether that motion is debatable

Mr. Maginnis, of Lewis & Clarke: I am heartily in favor of most of the statements in this memorial, but I would ask whether it is to be construed as a vote of censure on the Republican administration: if it is, I should be a little tender about voting on it

Mr. Burleigh, of Custer: I just want to make one remark.

The President: This question will be received without debate.

Mr. Burleigh, of Custer: I want to explain my vote then. (Laughter) I am heartily in favor of the amendment embraced in this proposition. I have no objection to their taking their lead in any direction they want to, but we don't want it here.

The President: The gentleman is out of order.

Mr. Callaway, of Madison: I would ask for information: what the history of this memorial is?

The Clerk read the history of the memorial for the information of the gentleman.

Mr Callaway, of Madison: Now, Mr. President, if I understand the motion, it is to lay this matter on the table, and on that I call for the ayes and nays

Mr Rickards, of Silver Bow: I wish to call attention to one fact. I notice that this is called Memorial No. 1. If I remember correctly, Major Maginnis presented a memorial here respecting arid lands which was marked No. 1.

The President: The Clerk will look that matter up, and correct the number if it is wrong. If there is no objection, the ayes and nays will be entered in the journal. Those in favor of the motion to lay the resolution on the table will when their names are called say aye, and those opposed no.

Mr. Cooper, of Gallatin: I want to explain my vote upon this proposition. It seems to me to be political dodge on the part of the gentleman who introduced it, and I want simply to say that I object to making a special case of this lead matter. If he will include all the Montana industries I would be very apt to vote for it I shall vote aye.

Mr. Hershfield, of Lewis & Clarke: I would like to explain my vote in this matter. I am heartily in favor and in accord with the intent of the memorial. I would like to see a ruling from the Secretary of the Treasury in favor of the lead interests of Montana; but the language in the memorial does not accord with the proper dignity and propriety towards the officials of the government, and therefore I shall vote aye.

The Clerk called the roll, and the vote stood as follows:

Ayes: Aiken, Bickford, Browne, Collins, Cooper, Courtney, Dixon, Gaylord, Gibson, Hammond, Hatch, Hershfield, Hogan, Joyes, Middleton, Myers, Robinson, Stapleton, Toole, J. R.; Winston—20.

Nays: Brazleton, Breen, Buford, Bullard, Burleigh, Burns, E.; Callaway, Carpenter, Chessman, Conrad, Craven, Dyer, Eaton, Gillette, Goddard, Hartman, Haskell, Hickman, Hobson, Kennedy, Knippenberg, Knowles, Kohrs, Loud, Luce, Maginnis, Marshall, McAdow, Mitchell, Ramsdell, Reek, Rotwitt, Rickards, Sargent, Toole, Jos. K.; Warren, Witter, Mr. President—39.

Absent: Burns, A. F.; Burns, A. J.; Cardwell, Cauby, Durfee, Fields, Graves, Joy, Kanouse, Marrion, Mayger, Muth, Parberry, Schmidt, Watson, Webster—16.

The Chair announced the vote and declared the motion to lay the resolution on the table lost.

Mr. Warren, of Silver Bow: In connection with this matter, I wish to disclaim any political dodge or anything of the kind. I have in my hand a letter written to M. D. Van Horn, secretary of the American Lead Producers Association, to the Honorable B. C. Kingsberry, one of the prominent Democrats of this country. Mr. Kingsberry handed me this resolution written by the secretary of that association. A like resolution had also been sent to the Idaho Constitutional Convention, and they adopted it. I have a telegram from the Washington Constitution Convention saying that they have without a dissenting voice adopted the resolution, and saying, what is the matter with Montana? I disclaim any partisan side issue or anything of the kind. I now move the adoption of the resolution.

The President: The motion is to commit to the Committee of the Whole.

Mr. Luce, of Gallatin: Now, sir, I am right about this matter. Perhaps the language of this memorial might be changed by this convention. I think we are not wholly ready to vote upon this and commit ourselves upon the memorial upon a mere reading of the matter, and my object in having it printed is to have it laid upon the desks of every member here. I don't think there is anything the matter with Montana. I may vote for it or against it, as I see fit I have no general recollection now as to what was in that, and I make the motion to have it put somewhere on the general file where we can vote on it conscientiously. I hope my motion will prevail.

Mr. Carpenter, of Lewis & Clarke: I hope the motion to print will prevail. I presume that I shall vote for the resolution. I am in favor of it in a general way, but I shan't vote for it without a careful scrutiny of it. If it contains any reflection upon anybody who has been in charge of the affairs of this government, I should not vote for it in this convention, no matter whether it was a Democrat or a Republican this reflection was cast upon. Therefore, while I am in favor of this resolution, I hope it will be printed.

Mr. Hershfield, of Lewis & Clarke: My colleague only expresses the request which I contemplated making in this matter, and that is that the suggestion of the gentleman from Gallatin is very wise and ought to prevail. We ought to know what we are doing in a matter of this kind. If t comes out in the public print and contains censorious remarks on public authorities, it would not be dignified upon the part of this convention to be guilty of an act of that kind.

Mr. Conrad, of Choteau: I move to amend by referring it to a select committee with instructions to print after they have revised this memorial.

The President: The motion to refer to the Committee of the Whole the Chair thinks takes precedence.

Mr. Ramsdell, of Missoula: I move that a committee be appointed by the Chair to which all memorials of this character may be referred.

The President: The motion is not in order. The Chair will state the question. The question before the convention is that the resolution be ordered printed and referred to the Committee of the Whole.

Mr. Callaway, of Madison: I have not discovered in this convention much of politics; nor do I believe that the memorial presented by the gentleman from Silver Bow is of any political significance The gentleman from Lewis & Clarke said something to the effect that if we wanted to censure the President and the Secretary of the Treasury, we might have the pleasure of doing so, if I understood his remarks.

Mr. Maginnis, of Lewis & Clarke: No sir. I said that if it did contain a censure upon the Secretary or the President we ought to be tender about passing it.

Mr. Callaway, of Madison: Now, Mr. President, I differ with my friends from Lewis & Clarke, Governor Carpenter and Mr. Hershfield. This is a memorial in a very respectful tone—very respectful words. it is perhaps an implied censure; I don't know about that; but if it be that any officer of this government, I care not who he is, from President down to the lowest office, has been negligent in his duty, it is the right of this convention, representing 200,000 of the sovereigns of this nation, to say that we want to call their attention to what has been neglected. I have no disposition, Mr. President, to shirk the responsibility. Now, taking into consideration a matter of such great importance to the mining industries of Montana, when we have some reason to believe that the law has not been enforced, to say to ourselves in this convention we will vote "no" because we fear that somebody might be offended, I do not believe it is the intention here at all; but when we know that the interest affected by the nonperformance of the law has been jeopardized, we certainly have a right as a part of the people of this country to say to these gentlemen, "We would ask you, and we ask to call you attention to the fact that this law has been neglected," if it be true. If the law has not been neglected, then we have simply done our duty in asking whether we have.

Mr. Dixon of Silver Bow: Mr. President, it seems to me in relation to this matter it is a mistake all the way through. What are we here for? Are we here to recommend legislation to the United States government? Are we here for the purpose of memorializing Congress and about what we think it ought to do? Or are we here under the Act of Congress, and by virtue of that act to form a constitution for the people of this Territory? My own idea has been that the last was the purpose for which we were assembled, and I think, as I said before, this proposition has no connection with the constitution, and ought not to be incorporated here, and ought to be defeated here. Now, so far as I am concerned, I have a desire to say, and take this opportunity of saying it, rather than interrupting the roll call, that, as to my own vote, there is a portion of this proposition that I am heartily in favor of; although I don't believe it is the proper time and place to present it, nor is it the proper way to bring it before the Congress in this memorial. There is a tariff on lead. So far as that tariff is capable of a construction favorable to the interests of Montana, I am in favor of that construction decidedly, and I would like to see that construction put upon it by the Secretary of the Interior; but so far as this resolution goes and further—so far as it would seek to imply a general leaning or inclination to favor a system of protection itself, I should certainly be opposed to it. As I said, it is capable of construction, and if it favors the interests of this Territory, I would lke to have it construed in that way. Further than that, I would not like to see this resolution go. So far as it implies any censure upon any of the officers of the government, it seems to me, it is reflecting upon their inaction in the matter, to say the least, and I think it would be impolitic at this time for the convention to take any action reflecting upon any portion of the administration in power As I said, it seems to me our business here is to make a constitution, and to do nothing else. It is neither our right nor our privilege, nor our power, as I take it, to do anything else? There are matters about which we may memorialize Congress when we are a state, but this resolution seems to be entirely out of place and improper as it stands now.

Mr. J. K. Toole, of Lewis & Clarke: Like the gentleman from Silver Bow, I think this resolution ought not properly to have been introduced into this body. I don't think it is the place for memorials, but I am in favor of the proposition laid down so far as it undertakes to secure such a construction of the present law as shall prevent the importation of Mexican lead ores into the United States without the payment of the duty prescribed by law. I am in favor of it to that extent, and with that explanation I propose to vote for the resolution. I would go further, and urge it in much stronger terms if I were in a political convention or a legislative assembly or a mass meeting upon the hustings, but I don't think it necessary to go further here. In a speech which I made in this city a year ago, I said, "Under a law enacted by the Republican administration, and still in force, we have seen the lead ores of Mexico pour into the United States without the payment of duty. It came in absolutely free of duty. It occurred in this way: Under the present tariff laws silver and gold ores are on the free list and lead ores pay a cent and a half tariff or $30 per ton: but under the construction long prevailing in the treasury department it is held that if upon an assay of the ore value, more silver or gold than lead are found. the shipment is classified as silver or gold ores. as the case may be, and so the lead it contains comes in free. I have fought against this construction before the committee and before the department, and desired to be heard upon the floor of the House, but was unavoidably absent when that part of the tariff schedule was reached Lead is a merchantable article. The true construction of the law is that the ore ought to be fairly sampled, and if it contain any amount of lead, say 30 per cent, it should pay a tariff upon that 30 per cent or upon 600 tons, which would be equivalent thereto, but this construction was arrested by the Republican Senate. Senator Stewart of Nevada offered a resolution directing the Judiciary Committee of the Senate to inquire into and report what was the proper construction of the existing law; and that committee composed of a Republican majority, with Senator Edmunds at its head, reported that if the ore contained more silver or gold than lead that such ores should be classified as silver or gold, as the case might be, and that the lead should come in free."

I am still of that same opinion, and I do not think that because the administration, so far as its head is concerned, has changed in the meantime, that we ought to be so soft and delicate in the use of language as not to be able to say just exactly what we mean. I do not think there is anything in the language of this resolution that is, so far as language is concerned, such a reflection upon any gentleman connected with the administration but that he ought to be able to bear it, and if he finds he is wrong to make a change as quick as possible. So far as anything else is concerned in it, as suggested by my friend from Silver Bow, as might be construed to commit me to any other proposition than that, so far as lead is concerned, I wish it understood that that is not involved in my vote on the question; but that it relates to the resolution in regard to lead.

The President. The question is now upon the reference of the resolution to the Committee of the Whole—ordered to be printed first and referred to the Committee of the Whole.

The Chair put the question on the said motion and vote being taken the same was declared lost.

Mr. Sargent, of Silver Bow: I move the adoption of the memorial.

The motion was seconded.

The Chair stated the motion.

Mr. Ramsdall, of Missoula: I object to this upon the same ground as the gentlemen from Silver Bow and Lewis & Clarke. I do not wish to take my stand as a protectionist. Now, if this memorial is construed to mean simply that it is a memorial praying that if the tariff on lead shall be enforced. I am heartily in favor of it; but if it is construed to be general in its character, I am opposed to it.

Mr. Collins, of Cascade: As long as we have a tariff I am in favor of this present lead law, and in favor of compelling the Secretary, if we can, by public sentiment or otherwise, to change that ruling; but I am not certainly in favor of incorporating in a resolution or memorial in this convention, the assertion that the people of Montana or that this convention itself, is in favor of a particular line of policy, so far as the tariff is concerned. Now, the exact words of this memorial are "having ever advocated the protection of American industries." Now, I ask in all reason, is that right, that this resolution in this shape should pass a body of this kind? If it is a memorial to the Secretary, let the gentleman or some other one pass it around, and let those who are in favor of that sweeping clause, and in favor of that resolution, sign it; and those who are not, let them have the privilege of not signing it It seems to me it has no place here, it seems to me under our rules it should not come in here, and certainly we should not adopt the broad principle that every man, woman and child in Montana is in favor of tariff per se. I cannot understand how the gentleman from Lewis & Clarke can vote for this resolution. It is purely political and partisan. If that is stricken out and other things are stricken out, then I think it will have the unanimous vote; but I think their solution is in such shape that it should be voted down.

Mr Robinson, of Deer Lodge· We have met here to frame a constitution, not to petition the Secretary of the Interior for any ruling in his department. For that reason, I am opposed to the resolution.

Mr. Hogan of Silver Bow· I would state, as one of the members of the committee that that resolution was referred to that after reading the resolution and studying over it, a great many of us came to the conclusion it was no place for it; that it was more or less a political dodge That part relating to the tariff on lead was proper and right, but that the other part was not: and we thought we would report it back with the recommendation that it be not passed. For that reason, I made a motion that the report of the committee be received and the communication placed on file; it seems that motion fell by the wayside between here and the President's desk.

Mr. Craven, of Lewis & Clarke: I heartily agree with many of the views previously expressed. It does not seem to me that the reading of the resolution the way it is, is quite proper I happen to be a Republican, and I am in favor of protection, but this is no place for the expression of those matters All of the gentlemen, I think, are in favor of enforcing existing laws, and if the existing laws provide that lead shall not come in free, I think all would agree that those laws should be enforced until changed. I hope that the resolution will be so changed and so worded that it will refer only to the matter of lead, and not to the general system of protection, as intimated by the remarks of the gentleman from Cascade.

Mr Burleigh, of Silver Bow: There is no desire on the part of myself to worry anybody or to hurt the feelings of any half-bred Republican or moss-back Democrat If the gentleman who made the motion to adopt that resolution will withdraw that motion, I would like to have the resolution referred to such a committee as would dress it up in such language as would be acceptable I wish to have the memorial brought to the attention of the President, and in order to do that, it should be practically unanimous, and for that reason should be couched in such language as will be entirely respectful in tone

Mr. Sargent, of Silver Bow I will withdraw my motion

The President: What is the pleasure of the convention?

Mr. Eaton, of Park: If in order, I move that the report be referred to a special committee of five, to be appointed by the Chair.

The motion was seconded.

The Chair stated the motion

Mr Ramsdell, of Missoula I would amend that by making it a committee to which all memorials be referred

The President· All memorials, according to the rules of the convention, are to be referred to the proper committees. The Chair believes the rules so state.

The Chair put the question on the motion of the gentleman from Park, Mr. Eaton, and a vote being taken the same was declared carried.

The President: The Chair will announce the committee in due time.

Mr. Kennedy, of Missoula· I believe there is a special order for this morning—Section 4 of the article on Revenue and Taxation

The President· The question for the consideration of the convention is Section 4 of the Article on Revenue and Taxation.

The Clerk read Section 4 as offered by the gentleman from Silver Bow, Mr. Dixon, as follows· "Sec 4 Ditches, canals and flumes heretofore or hereafter constructed by any person, company or corporation, for the sale, rental, distribution or other beneficial use of water, shall be taxed upon the annual net proceeds of such sale, rental, distribution or use, in such manner as may be provided by law. Provided, that the use and price of such water shall at all times be subject to regulations by the Board of County Commissioners, or other authority as in this constitution provided; and provided, further, that this section shall apply only to the ditches, canals and flumes of such persons, companies or corporations as shall, within such time as may be provided by law after they commence the sale, rental, distribution or use of water, make and file in the office of the Secretary of State, their duly executed written consent to be subject to and comply with all the terms and conditions of this section and all provisions of this constitution, and a failure of any such person, company or corporation to make and file such consent shall render the ditches, canals and flumes of such person, company or corporation subject to taxation in the same manner as other property without regard to this section, so long as said person, company or corporation fails to file such consent."

Mr. Dixon, of Silver Bow: I desire to offer an amendment to that section.

The President: The gentleman from Silver Bow, Mr. Dixon, moves to amend Section 4, Proposition No. 27, as follows:

The Clerk read: Proposition No. 27, amend Section 4 by striking out the words "or beneficial use of water" in line 2 and insert instead the words "or use of water for irrigation," so as to make it read, "ditches, canals and flumes heretofore or hereafter constructed by any person, company or corporation, for the sale, rental, distribution or use of water for irrigation" &c.

The motion to amend was seconded.

Mr. Reek, of Deer Lodge: I would like to say a word in reference to the position that I have taken in regard to this Section 4 When this question was up last week I voted against the measure, believing as I did and do now, that it was inconsistent with that part of the constitution already adopted; but the friends of the measure, in order to keep this before the House, stated that it was a very important question, and insisted that t was not perfectly understood, and I made a motion to reconsider. I am aware that I have made myself liable to censure by some of the members here for my liberality in the matter, but if there is a wrong to be righted it is the duty that I owe, and I do not wish to shirk any responsibility whatever.

Mr. Hartman, of Gallatin: I desire to say a few words in addition to what I have already said in opposition to this measure. Now, gentlemen on the floor have been very profuse in their arguments to show that irrigation is a necessary matter for us to consider in this territory. That is not a debatable question; we all agree upon that; and therefore, it seems to me that there is no need of any member going on and showing up the beauties and necessities of irrigation. The simple question is this: In the first place, is it a matter for this constitution to decide, or this convention to decide; or, in the second place, if it is a matter for us to pass upon is it a meritorious measure? That is the only thing. We will all admit that upon irrigation depends the salvation of the agricultural interests of this community. Now, then, supposing for one moment that some manufacturing corporation from the eastern States should come into the Territory of Montana and say, here, we want to be exempted except upon our net proceeds. The identical same argument would be used there as is used and as has been used upon this question of irrigation Capital invested and manufacturing institutions will benefit the State of Montana as much capital as invested in any other enterprise, and therefore, if the argument is good that because it is a beneficial matter for the State of Montana to encourage irrigation, therefore it is a beneficial thing for us to encourage manufacturing institutions and if the argument is good to exempt all of the property in the matter of irrigating canals, so it is in manufacturing institutions. Now, then, in reply to the argument which gentlemen starting this proposition have given, that because it is within the control of the Board of County Commissioners that therefore no harm can accrue, I desire to ask the gentlemen this question. Suppose we, in the State of Montana, like the various other States in the Union, notably the State of Indiana—I say supposing this State assumed the control and regulated the price which should be charged by railroad companies for fares and freight, would that be an argument sufficient to induce you to support a bill which would simply exempt the railroad companies' property from taxation except upon the net proceeds, and I do say, gentlemen, that that is exactly the same principle which applies here. Let me repeat it: If the State of Montana had the control and the regulaton of the prices to be charged for transportation of freight and passengers in this State, would you be willing to come here and by your vote say that all of the rollng stock, track, rails and roadbed of that company should be exempted? That is exactly what you are saying here. Now, then, gentlemen also say that this is upon a par with the mining industry. It is not on a par with the mining industry. I opposed that bill because I thought it was not proper in the Constitution. It is not on a par with the mining industries for this reason: you cannot possibly look beneath the surface of the ground and say what the value is beneath it, but you can go along a canal or ditch from its head clear through the country which it runs and say what extent it is, how much water it carries, and by an examination of the books of the company, you can ascertain what it produces. Now, then, what is it that lends value to any property? It is the capacity to produce a revenue. What is it that lends value to a farm? It is its capacity to raise a certain amount of grain.

Mr. Cooper, of Gallatin: I would like to ask the gentleman a question. I would like to ask him if there would be any taxable property in the county from which we hail were it not for the ditches in that county?

Mr. Hartman, of Gallatin: I will answer that question. In answer to the question, I desire to say this. In the first place, the agricultural interests of the County of Gallatin are almost its exclusive interest except coal mines, and I do say this, that without irrigation there would not be one-tenth of the grain raised in that valley that there can be with irrigation; but I say this, Mr. President, that every single industry which will be a paying industry will stand upon its own legs, and if it does not it is not a proper industry. If you have got to coddle and fondle and caress these great capitalists in order to get them to come out here and invest their money in these enterprises, then I pretend to say that we don't want these enterprises, for home capital will produce them; home capital will be invested in these enterprises just as fast as the demands of the people call for it We know that the old theory of the investment of money in any business is the demand for it A man does not go out here on the broad prairies and establish a mercantile establishment Why? Because there is no demand for it. A man does not go to work in a barren country where the soil is not one-half inch deep and establish ditches, because if he did he would not be able to raise anything on an entirely barren soil, but it is the arid plain, where we have good soil, which is too dry, that irrigation is called into play. Now, I desire to say that I have given this matter considerable stuly since it was brought up, and some before, and I have only been able to find one State that has touched upon this matter in its constitution, and that is the State of Colorado I desire you gentlemen to bear with me one moment while I read a part of the constitution of Colorado in reference to this question: "Ditches, canals and flumes, owned and used by individuals and corporations for irrigating lands owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed so long as they shall be owned and used exclusively for such purpose." That is all that I have been able to find that even smacks of the proposition which gentlemen argue here. We are taking a new departure. We are saying by our views in this constitution that it is one of the fundamental principles of the State of Montana, that a certain class or a certain occupation shall have a preference extended to it over all others Are gentlemen ready to admit that that is a kind of principle to which they adhere in this convention, which obtains with the members of this convention? I pretend to say that it is not the duty of this convention to say that any man, any occupation, any industry shall have one preference over another. There is but one thing to do, and that is to put all classes, all men, all industries, upon the same plane, and whenever you assume to do otherwise you are deriding the principles of Republican form of government—equal burdens and equal taxation for all.

Mr. Cooper, of Gallatin: Is it not the object of a protective tariff to foster the industries of the United States?

Mr. Hartman, of Gallatin: It is the object of the protective tariff to foster all of the industries of the United States, and by its indirect application, every single one of the ogricultural interests of the United States are fostered. But I do not think gentlemen are so anxious about this bill that they would insert a political document into it Now, then, the local papers of this place, for what reason I am not prepared to say, have taken up the cudgel for the support of this bill. One of the local papers says: "In the earlier history of irrigation, both in California and Colorado, irrigation corporations did come into existence, but the adoption of wise laws subsequently has relieved the people from that evil." Do you pretend to say that even a wise law, or any law, could have any effect in the face of the bill which is introduced here. Are legislators superior to the constitution? If so, the argument is good; if not, it is simply false. Now, Mr. President, my individual interests rest wholly with the fostering of agricultural interests. Do away with the agricultural interests of our county, and I might as well close up my law office and go away from there. And I want to say, furthermore, that I have just returned from my own home, and there I met numbers of men, and every single one of them voluntarily said, "We do not want the irrigation bill to pass" Now, I do not want to say—I dislike very much to differ with my colleagues—they are both older men than I am, and men for whom I entertain the sincerest respect—but I do pretend to say, gentlemen, that these persons came to me voluntarily—and we are the greatest agricultural county in this territory—and wthout a dissenting voice they enter their protest against the passage of this bill. I hope that gentlemen who come from other counties, who come from mining counties, will consider this as a fact. I do not know at this time that I have anything further to say on this proposition. I will say in justice to the papers here that one of them, "The Independent," has taken the view that I have stated. the other two have taken the other bill.

Mr. Middleton, of Custer: It is a little remarkable why my young friend from Gallatin should become so warm on this subject. He starts out by citing a comparison of this kind of companies, specially for the purpose of irrigating these arid lands, with mercantile companies. Now, I have known many institutions where cities and towns have held out inducements to large manufacturing or mercantile companies by way of fair bonuses to establish a business within the city or town.

Mr. Hartman, of Gallatin: Is that a good principle to incorporate in the constitution?

Mr. Middleton of Custer: I have known, so far as the matter of railroads is concerned that the Congress of the United States made a grant to the Northern Pacific Railroad company providing that its right of rail and road-bed should be exempt from taxation in the territories. What was the purpose of that? The purpose and object was if it had any, was to hold out an inducement to the company to go ahead and construct a road there. What for? In order that this western country might be opened up, in order that it might become populated; in order that these lands might be settled upon and farmed. When we get out here, we find that most of the lands without an artificial means of irrigation are practically arid and in order that we may avail ourselves of the inherent properties of those lands, which with water are productive, it seems to me it would be a part of wisdom to hold out any and every inducement that we can, to place these lands in such a condition that they will render crops. It is conceded by the gentleman himself—conceded on all sides—that the majority of the lands, in fact nearly all of them that are known as agricultural lands in the territory, are arid lands. Without irrigation they are practically for the purposes of agriculture worthless. Now the gentleman says to us that he has talked with many of the people from his county, and they say they are not in favor of this proposition being inserted into the constitution. I believe that they can be inserted in this way. It is a notorious fact that Gallatin County is one of the oldest agricultural counties in the territory. The gentleman admits himself that the entire taxable property of that county today would not be one-tenth of what it is, were it not for the fact of irrigation. Now, the probabilities are that these very men with whom he talked appreciated the fact that they have an enormous amount of money employed in the matter of ditches that are already constructed there; that they have sufficient constructed, perhaps to irrigate those lands that are susceptible of irrigation in the county. Those ditches have cost an enormous amount of money. At the present time they are being taxed an enormous amount of money, and these individuals undoubtedly would hate to see these companies and corporations that are there now exempt from taxation. But that condition of affairs exists in many of the counties in the Territory. Is it not a fact that in Dawson, Yellowstone and Custer, and all of the northern tier of counties through, without this means of irrigation, or some inducement being held out—and this is but a small inducement, we cannot expect that those lands can be settled up or populated for years and years to come? In the Yellowstone valley it is not practicable for an individual, or for four or five individuals, owning farms there to amass money enough to take a ditch out of the Yellowstone River for the uprpose of irrigating their own lands. It is too extensive. So that that kind of thing can only be done by large companies, by constructing ditches, 20, 30, 50 or perhaps a hundred miles in length, by massing together an enormous amount of capital for the purpose of building county ditches that will have to be constructed in order to irrigate those lands Now, the gentleman will admit that as soon as those lands are irrigated they become at least ten times as valuable as they are today, and by reason of that increased valuation. the farmers, the owners of those lands, are paying more taxes, and they are glad and willing to do it because then they have property that will produce something. If they desire to sell their lands they can sell for $10 or $15 or $20, what they paid one dollar for. When they sow seed in the ground, they can raise a crop, and the matter of their increased tax is a comparatively small matter as compared with their increased gain in the way of production. Now I do not see any reason on earth why the gentleman from Gallatin should take the position he has. He undertakes to assume here, that all manner and kinds of industries and enterprises should stand on their own ledge. Now Mr. President that would be a very good free trade speech to come from my young Republican friend, and I do not quite see the consistency in his argument. It is a notorious fact that the policy of the Republican party has been to foster certain industries in that kind of way. But this is not for the purpose of fostering an industry. It is for the purpose of inducing capital to come into an industry that will benefit the people at large. Any industry that by fostering, can be shown to me to be a benefit to the people of the community, and would benefit all the people at large, I would favor a reasonable fostering of that industry; and when it is necessary for these inducements to be held out, it seems to me we should hold them out, because these lands will not be valuable at any time until they are irrigated. The gentleman from Cascade asserted here the other day that these local companies would become enormous extensive corporations, wealthy, and all that sort of thing. There is not any indication of that, so far as known in this territory as yet, and I think my friend from Gallatin will agree with me that there is not any ditch Company in his own county that is making any enormous amount of money, although they have been established there for years and years It seems to me that this proposition is unanswerable, and although it is in the nature of legislation, it is that character of legislation that ought to have a degree of permanence. Probably the legislature would enact that kind of an exemption; possibly the next one succeeding it would turn around and repeal it. These matters of enormous ditches or improvements in irrigation, when once constructed remain permanent, and the people who would attempt to hold out inducements, should have reason to believe that these inducements would have at least some degree of permanency. For that reason I am in favor of incorporating it into the constitution, and I do not see that it can possibly do any harm, but do believe that it will be such an inducement as will do a large amount of good

Mr. J. R. Toole of Deer Lodge· When propositions of this kind are raised they require some thought and some study. Since this matter has come up I have given it some little thought, and there are one or two points that I think have not been touched upon yet, by anybody I have heard speak on this matter in convention I want to say as a preliminary statement, that so far as the exemption of mines from taxation is conecrned, I think there is hardly any parallel. In fact we deny that there is any such thing as exemption of mines from taxation, but we assert that the manner of taxing mines has only been provided for. We assert that mines are taxed on the surface ground, and that the improvements and all matters pertaining to them are taxed the same as any other property. Now in relation to this matter I was inclined to go with the majority of men who are familiar with the agricultural section, and I am so inclined to go now. I see there seems to be a division. Still the impression I get is that the majority of the people from the agricultural counties—the people who are familiar with this irrigation question—are inclined to go against the adoption of this resolution, and in thinking the matter over, the point that occurred to me was this, is not this a matter that is wholly in the provisions of the County Commissioners? Will not the County Commissioners, sitting as a board of equalization, act upon this matter when it is presented to them? If a ditch that cost a hundred thousand dollars is not actually worth ten thousand dollars, is it not the province of the Board of County Commissioners to say that that property shall not be taxed for more than it is worth? And if so, what is the necessity of this proposition And that is the point that has determined my views and given me a decided view upon this side of the question. The Board of County Commissioners sitting as a board of equalization have this matter altogether in their hands, and if the money that is spent in the construction of a ditch is not paying money and the ditch is not worth the money expended on it, is it not usual for them, and do they not usually provide for an equalization of the tax rate? It seems to me I am right in that position. If not, I would like to be corrected.

Mr. Rickards, of Silver Bow: We have already heard from several members on this floor about the proposition now for consideration. I believe that every one of us have made up our minds how to vote, and I believe that we are ready to vote. Believing that, I call for the previous question.

Mr. Bickford, of Missoula: I would like to ask the gentleman not to call his previous question for just about a minute and a half. I do not want to speak longer than that.

Mr. Rickards, of Silver Bow: I do not wish to be arbitrary, but I believe that if Mr. Bickford be allowed to speak someone will want to reply to him.

Mr. Eaton, of Park: If the call for the previous question is withdrawn for a minute and a half at the request of the gentleman from Missoula, I hope it will also be withdrawn for a minute and a half at my request.

The Chair put the question on the previous question, called for by Mr. Rickards, of Silver Bow, and a vote being taken the same was declared carried.

The President: The question now is on the amendment offered by the gentleman from Silver Bow which will be read by the Clerk for information.

The Clerk read as follows:

Amend Section 4 by striking out the words "Or other beneficial use of the water" in line 2 and insert "Or use of water for irrigation"; so as to make it read "ditches, canals and flumes heretofore or hereafter constructed by any person, company, or corporation, for the sale, rental, and distribution or use of water called irrigation" etc.

The Chair put the question on the said motion of the gentleman from Silver Bow, and a division being called for the same was declared lost by a vote of 27 in the affirmative to 29 in the negative.

The President: The question now is upon the adoption of Section 4.

Mr. Callaway of Madison called for the ayes and nays.

The President: The Chair desires to state that after the roll call has once begun it cannot be interrupted. The Chair indulged some gentleman this morning, but will not do so again.

The Clerk called the roll. The vote stood as follows:

Ayes: Burleigh, Bickford, Carpenter, Cooper, Conrad, Dixon, Gaylord, Goddard, Hershfield, Hobson, Joyes, Knowles, Kohrs, Luce, Marion, Marshall, McAdow, Middletton, Mitchell, Myers, Ramsdell, Toole, Joseph K., Whitehill—23.

Nays: Aiken, Brazleton, Breen, Browne, Buford, Bullard, Burns, A. F., Burns, A. J.; Burns, Edward; Callaway, Cauby, Chessman, Collins, Courtney, Craven, Dyer, Eaton, Fields, Gibson, Gillette, Hammond, Hartman, Hatch, Hickman, Hogan, Kennedy, Knippenberg, Loud, Maginnis, Reek, Robinson, Rotwitt, Rickards, Sargent, Stapleton, Toole, J. R., Warren, Watson, Witter, Mr. President—40.

Paired: Haskell and Parberry.

Absent: Cardwell, Durfee, Graves, Joy, Kanouse, Mayger, Muth, Schmidt, Webster, Winston.—10

The Chair announced the vote and declared Section 4 of Proposition No. 27 lost.

Mr. Maginnis of Lewis & Clarke: I move to reconsider the vote by which the Section was lost, and move to lay that motion on the table.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis and Clarke, Mr. Maginnis and a vote being taken, was declared carried, and the motion was considered laid on the table.

Mr. Burleigh of Custer: I would like to know what condition this leaves this proposition in.

The President The original proposition has already been voted upon with the exception of this section, and adopted.

Mr. Hickman of Madison I presume the Committee on Revision will have the proper authority to renumber the propositions.

Mr, President: Yes, sir.

Mr Goddard of Yellowstone: I move the Convention resolve itself into the Committee of the Whole for the consideration of No. 24, Article on State, County and Town organization.

The motion was seconded.

The Chair stated the motion

Mr. Eaton of Park· Is there a motion before the convention at present?

The President: Yes, sir.

Mr Eaton of Park If the convention will bear with me I would like to present one matter; it is this As I understand the rules adopted by the convention provide that after each article has been adopted and referred to the committee on revision of phraseology and adjustment, it then is to be deposited with the secretary of the territory as corrected Is that correct?

The President. The Chair presumes they would not be deposited until after the constitution is voted upon as a whole.

Mr. Eaton of Park· What I am trying to arrive at is this, it occurs to me that after each article has passed through all these stages that it ought to be printed and laid on the tables of the members before its final adoption. With all due respect to the committee of revision, phraseology and adjustment, they are liable to error. For instance it may be possible to get some section in twice. While I recognize the fact I am sitting by unanimous consent, I feel as though we were making haste too rapidly when we act upon the final adoption in this way.

Mr Maginnis of Lewis and Clarke· I was going to suggest, Mr. President, if the gentleman from Yellowstone will withdraw his motion that here is a proposition No 32 that we might take up and pass in the time remaining.

Mr. Goddard of Yellowstone: I withdraw my motion.

Mr. Maginnis of Lewis and Clarke, I move that the convention then consider Proposition No. 32 in convention.

The motion was seconded.

The President: It is moved and seconded that the convention now consider bill No. 32 on "Military Reservations."

The Chair put the motion of the gentleman from Lewis and Clarke, Mr. Maginnis and a vote being taken the same was declared carried.

The President: The Clerk will read the article.

The Clerk read as follows.

Proposition No. 32. Military Reservations. August 3—Introduced by Judiciary Committee—W W. Dixon, Chairman. (General File No. 30.)

Article. "Section 1 Authority is hereby granted to and acknowledged in the United States to exercise exclusive legislation as approved by the Constitution of the United States, over the military reservations of Fort Assinniboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula, and Fort Shaw, as now established by law, so long as said places remain Military Reservations, to the same extent and with the same effect, as if said reservations had been purchased by the United States by consent of the Legislative Assembly of the State of Montana, and the Legislative Assembly is authorized and directed to enact any law necessary or proper to give effect to this article. PROVIDED, That there be and is hereby reserved to the State the right to serve all legal process of the State both civil and criminal upon persons and property found within any of said reservations in all cases where the United States has not exclusive jurisdiction "

Mr. Haskell of Dawson: I move to insert after the words "Missoula" in line 3 the words "Fort Buford."

Mr. Maginnis of Lewis and Clarke: Is their a portion of that reservation in this territory?

Mr. Haskell of Dawson: One half of it

Mr Kennedy, of Missoula. It seems to me that under rule 26 this matter will have to be referred to the committee of the whole.

Mr. Maginnis of Lewis and Clarke: We can suspend the rules.

The President· It is understood that the rules are suspended. The Chair inferred that the gentlemen all understood that these matters had to be considered with the committee of the whole.

Mr. Bickford of Missoula: In order that there may be no doubt about it that the rules are suspended I move that this article No. 32 be considered in the convention as the final consideration.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Missoula, Mr. Bickford, and a vote being taken the same was declared carried.

The President: An amendment has been offered by the gentleman from Dawson, to amend by inserting "Fort Buford."

The question is raised as to whether any portion of the reservation is in Montana Territory.

Mr. Burleigh, of Custer: Quite a portion of it. I do not know that one-half is in the territory of Montana. It lies but a short distance below the mouth of the Yellowstone River. We once had a matter of jurisdiction come up in the Court of Yankton, and it was there ascertained that quite a portion of the military reservation was in Montana.

Mr. Myers of Yellowstone· As these military reservations should all be named, and if my memory serves me right there is a reservation on the Custer battlefield, and a monument erected there, I would suggest we strike out the word "the" on line two, and insert "all military reservations." and strike out all after the word "reservations." It would then read "Of all military reservations now established by law" etc. It seems to me we would make no mistake about it if we did that, and I make the most of it.

The President: Will the gentleman from Dawson accept the amendment.

Mr Haskell of Dawson: My amendment simply is as to line three. This makes another amendment of a general bill.

The President: The amendment is that Fort Buford be inserted.

The Chair put the question on said motion, and a vote being taken the same was declared lost.

The President: The Chair is now waiting for the amendment of the gentleman from Yellowstone.

Mr. Maginnis of Lewis and Clarke: I would state that this is in accordance with the request of the secretary of war, transmitted by the Commander of the department and they may have some reason for it, or they may propose to abolish, which I hope they will, all these unnecessary portions of these military reservations which are all too large.

Mr. Haskell of Dawson: I would say that the fort is within a mile of the boundary line of the territory of Montana.

Mr. Dixon of Silver Bow: The reservations named in the article are those mentioned by the Commander of the department, and as I understand forwarded by the secretary of war. These are the reservations as I understand it that the United States wants included in that article Now there is no advantage whatever, on the contrary it would be perhaps a detriment to the state to give up its jurisdiction over any of these military reservations, and I am not in favor of conceding the power over them to the United States any further than we can help. That is the reason why these first were mentioned specially, because they were mentioned specifically in the communication from General Rugar. I am not in favor of giving up the authority of the state over these military reservations further than the government requires and requests, and I am in favor of passing this just as they have given it.

Mr. Maginnis of Lewis and Clarke: The authorities of the government certainly must have had some reason for naming these military reservations in this way, and I am in favor of the adoption of the report of the Committee.

Mr. Myers, of Yellowstone: I will withdraw my motion.

Mr. Hartman of Gallatin: I move the adoption of the article. The ayes and nays were demanded.

The President: If there be no objection the ayes and nays will be entered on the journal.

Mr. Eaton of Park: Is this upon the final passage of the article?

Mr. Hartman of Gallatin: I move to put the bill on its final passage.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Gallatin, and a vote being taken the same was declared carried

The President: The vote now will be upon the final disposition of Proposition No 32. The ayes and nays will be entered on the journal.

The clerk called the roll.

The vote stood as follows:

Ayes Aiken, Bickford, Brazleton, Breen, Brown, Buford, Bullard, Burleigh, Burns, A. F.; Burns, Edward; Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Courtney, Craven, Dixon, Dyer, Eaton, Fields, Gaylord, Gibson, Gillette, Goddard, Hammond, Hartman, Haskell, Hatch, Hershfield, Hickman, Hobson, Hogan, Joyes, Kennedy, Knippenberg, Knowles, Kohrs, Loud, Luce, Maginnis, Marion, Marshall, McAdow, Middleton, Mitchell, Myers, Ramsdell, Reek, Rotwitt, Rickards, Sargent, Stapleton, Toole, J. K, Toole, J. R, Warren, Watson, Whitehill, Witter, Mr President—61.

Nays, none.

Absent· Burns, A. J., Callaway, Cardwell, Durfee, Graves, Joy, Kanouse, Mayger, Muth, Parberry, Robinson, Schmidt, Webster, Winston—14.

The President: The motion to adopt Proposition 32 is carried, and the Proposition will go to the engrossing committee, and from there to the Committee on Revision, Phraseology and Adjustment.

Mr Burleigh of Custer I move the Convention take a recess until 2 o'clock.

Motion seconded.

The Chair put the motion on the question of the gentleman from Custer, Mr. Burleigh, and a vote being taken the same was declared carried.

The Convention took a recess until 2 P. M.

AFTERNOON SESSION.

Tuesday, August 6, 1889.

The Convention was called to order by the President at 2 P M.

The Clerk called the roll

The President What is the pleasure of the Coonvention.

Mr. Goddard of Yellowstone I move the Convention resolve itself into the Committee of the Whole for the consideration of General File.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Yellowstone, Mr. Goddard, and a vote being taken, the same was declared carried.

The President called Mr. Kennedy of Missoula to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Kennedy of Missoula in the chair.

The Committee was called to order.

The Chairman· When the Committee dissolved last evening they had under consideration Section 10, Proposition 24, The Article on Municipal Corporations and Offices, to which Section 10 amendment had been adopted. For the information of the Committee the Clerk will read Section 10 as it now stands

The Clerk read Section 10 as follows.

"Sec. 10. The term of office of the County Commissioners shall be four years, except as otherwise provided for in this Constitution. At the first general election provided for by this Constitution there shall be elected in each county three County Commissioners The one receiving the highest number of votes shall hold his office until the general election in 1896, the one receiving the next highest number of votes shall hold his office until the general election in 1894, and the one receiving the lowest number of votes shall hold his office until the general election of 1892 and each shall hold office until his successor is elected and qualified A vacancy in the Board of County Commissioners shall be filled by appointment of the Governoor."

Mr Luce of Gallatin· I move that Section 10 be adopted as amended.

The motion was seconded

Mr. Collins of Cascade· The gentleman from Silver Bow, Mr. Rickards, had a motion pending last evening.

The Chairman. His amendment was lost the Chair understood. Mr. Rickards proposed an amendment to Section 9, which was carried, but the amendment to Section 10 as I understand it was lost.

Mr. Rickards of Silver Bow· I move that Section 9 be stricken out

The Chairman· The gentleman from Gallatin proposed an amendment to Section 10 which was seconded.

Mr. Luce of Gallatin· My motion was to adopt Section 10.

Mr. Carpenter of Lewis and Clarke: I offer the foollowing as a substitute for Section 10.

The Chairman: The gentleman from Lewis and Clarke offers the following as a substitute for Section 10. "In each County there shall be elected three County Commissioners whose terms of office shall be four years. A vacancy in the Board of County Commissioners shall be filled by appointment by the District Judge in the District in which the vacancy occurs.

The motion was seconded.

Mr. Carpenter of Lewis and Clarke: That involves striking out Section 9. If that amendment is voted Section 9 should be stricken out. That leaves the term of the County Commissioners just as it is, and the Board the same; and if there is anything to be said in regard to the terms of office that would properly come in Section 11, with all County officers.

The Chair put the question on the motion of the gentleman from Lewis and Clarke, Mr. Carpenter, and a vote being taken, the same was declared carried.

Mr. Rickards of Silver Bow: Now, Mr. Chairman, I move to strike out Section 9.

The motion was seconded.

The Chair put the question on said motion of the gentleman from Silver Bow, Mr. Rickards, and a vote being taken the same was declared carried.

Mr. Burleigh of Custer: I would like to hear the substitute read again.

The Clerk read the substitute of the gentleman from Lewis and Clarke (Mr. Carpenter) which was adopted, for the information of the gentleman.

The Chairman: The Clerk will read Section 11.

The Clerk read Section 11 as follows:

"Sec. 11. There shall be elected in each countythe following officers: One County Clerk, who shall be Clerk of the Board of County Commissioners, and ex-officio recorder of deeds; one Sheriff; one Treasurer, who shall be collector of taxes; one County Superintendent of Schools; one County Surveyor; one Assessor; one Coroner; one Public Administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of two years, except that the county officers elected at the first general election provided for by this Constitution, shall hold their offices until the general election in 1892, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of county Commissioners, shall be filled by appointment by the Board of County Commissioners, and the appointee shall hold office until the next general election."

Mr. Warren of Silver Bow: I have an amendment.

Mr. Goddard of Yellowstone: I introduced a Proposition early in the Session which I believe was numbered No. 6, and before we proceed further I will ask the Clerk to read that Proposition for the consideration of the Committee.

The Chairman: The gentleman from Silver Bow, Mr. Warren, has offered the following amendment to Section 11:

"Strike out all section after the word "years" in line 6 to and including the word "qualified" in line 8, and insert as follows: 'Provided that all county and township officers now holding offices under the Territory of Montana, or any county or township of said Territory, are hereby declared to be officers in the respective counties and townships of the State of Montana until the general election for Congressmen in the year 1890, except the office of Probate Judge which is abolished, and County Commissioners, who shall serve the terms for which they have been elected'"

Mr. Warren of Silver Bow: I move the adoption of the amendment.

The motion was seconded.

Mr. Rickards of Silver Bow: Well, I am in favor of what the mover of this motion evidently aims at, yet it seems to me that the wording of it is not quite clear in one particular. If I heard the reading correctly, it specifies that those holding office shall hold office until the next general election. Now doesn't the mover mean until their successors are elected and qualified?

Mr. Carpenter of Lewis and Clarke: As there is a question raised as to the duration of these officers I would offer the following amendment, which I think will cover it in a few words.

The Chairman: The gentleman from Lewis and Clarke, Mr. Carpenter, offers the following amendment to Section 11: After the word "years" in line 6 strike out all in lines 6 and 7 up to and including the words "1892" and insert "All county and township officers in office at the time of the adoption of this Constitution, except Probate Judges, shall hold their respective offices until the expiration of the time for which they were elected.

Mr. Warren of Silver Bow: I will accept that amendment.

The Chairman: The gentleman accepts the amendment of the gentleman from Lewis and Clarke, which is now the question before the Committee.

Mr Collins of Cascade: I hope that this question will not come up in an article to the Constitution, for our Constitution will be printed as a beginning of every law book for years to come, probably, and it seems to me that we should not drag in the offices of the Territory of Montana so conspicuously. If we are to put this in any place in our Constitution, let us put it in the Ordinance, so that when the objects for which the ordinance is created shall have been carried out, the ordinance can be dropped.

Mr. Goddard of Yellowstone: I think myself that the proposition involved here is a good one, but I think that I understand, too, the object and purpose of the members in putting this off as far as possible in order that it may be defeated. Now I introduced a resolution early in this session, which had for its object the same thing as the resolution offered by the gentleman from Silver Bow, except that it was worded in a little different way. I am in hearty support of the proposition as amended by the gentleman from Lewis and Clarke, and hope it will be inserted in the Constitution, and in this provision, and I hope that this Convention will not take chances in failing to insert it in this Section here Now, so far as the measure is concerned it is a just one, and it matters not whether the officer is a republican or democrat, it is an equitable and just provision which ought to be incorporated in this Constitution, inasmuch as the county officers and precinct officers for the Territory were elected for two years last fall, and inasmuch as they have spent their money to be elected. Inasmuch as the people have chosen them as their choice for the offices respectively which they are filling. All these considerations are in favor of the adoption of this proposition. It might be urged, and undoubtedly will be urged that the proposition should not prevail, that the officers should not hold their terms of office until 1890 for the reason that it will necessitate another election. Anticipating that argument I will say that in 1890 it will be necessary to hold an election for the election of a Congressman. The expense will be very slight Certainly the expense will be no more for that election than it will be if the election were held this fall. Another good reason for this proposition is this. We are about entering upon a new system of balloting in this Territory called the Australian system, which is a very complicated system. We have never had any experience in that respect. Another thing we have adopted the system of registration of the voters. All these matters will tend to complicate the election now before us, and I am in favor of eliminating County politics so far as may be from this election. It is the first election to be held in the State of Montana, and I am in favor of eliminating everything of a factional nature, everything of local interest, and allowing this new system of voting to go upon its merits, so that it may be thoroughly tested without the swapping and trafficing in votes which is liable to take place if County officers are mixed up in this election. Now I happen to know that a great many of the members of this convention are pledged to the support of a proposition of this character. I happen to know some of the gentlemen who have pledged themselves to support it. I have learned since this convention has been in session that some of those gentlemen regard the ties which bind them to their party and their caucus more sacredly than they do their vows. I may be misinformed upon this proposition, but I say it has come to my knowledge that some of the gentlemen who have pledged themselves to their constituents before election, and have promised them since election that they would stand on this proposition, are wavering in this matter, and now claim they are bound by their caucus. All I would have to say to that kind of man is just this, that if his political convictions are stronger than his convictions of right, are stronger than his promises and his fidelity to his constituents, then let him vote as he chooses. But I wish to serve notice upon those gentlemen that if they violate the promises which they made their constituents, that I will undertake before this debate closes to arraign them in such a manner that their constituents may know of their conduct, and may read the records as to their vote here.

A member: Name the men.

Mr. Goddard of Yellowstone: No, I will not name them. Some of the men who have made these pledges are friends of mine, and I would say all of them for that matter, and for that reason I do not care to mention the names. It may be that those gentlemen will fall into line for all I know, and if they do it will be better that they did not know to whom I refer when I make this remark. Suffice it to say that this proposition is a proposition which has merit, and which should be supported by every member of this convention regardless of political convictions. It is a matter of justice to the men who are now in the offices. It is a matter of pure justice to the constituency that elects them, and so far as I am concerned I shall support the proposition.

Mr. Knowles of Silver Bow: I believe we have a preamble to our constitution that we have adopted, that we are grateful to Almighty God for our liberties, and that we have adopted this constitution in accordance with the Enabling Act; and the Enabling Act provides that this convention may provide for the election of State officers by an oordinance. Now I agree with the gentleman from Cascade that this matter does not belong in this bill. I agree with the gentleman from Yellowstone County upon this proposition, but I think we had better follow out the last part at least of our preamble. If we are doing this according to the Enabling Act we had better put this provision in an ordinance.

Mr. Eaton of Park: I would like to call the attention of the gentleman who last spoke to a different understanding that I have of this proposition as regards the Enabling Act. I do not know what the legal aspect may be, but as I understand the reading of this it provides that the constitutional convention may by ordinance provide for the election of officers for full state government. Now what is proposed here is not the election but the retention of officers alread elected. It seems to me to be a different propostion, I am asking simply for information now, but it seems tome that the Enabling Act refers to the election of officers, and not to the retention of those officers already in office.

Mr. Maginnis of Lewis and Clarke: I would like to have the report of the judiciary committee on this proposition read.

Mr. Middleton of Custer: Is an amendment in order?

The Chairman: Yes, sir.

Mr. Knowles of Silver Bow: I wish to say to the gentleman this, that I suppose that we are considering Section 11 which provides for the election of officers. Now if those officers mentioned in that section are a part of those which we are to provide for in accordance with this Enabling Act, it means officers that are to start and govern in full force, and it therefore does not belong in here, but belongs in an ordinance. Of course they might put in here that they may retain them in office, and that would be another thing entirely. But we are not considering the proposition of whether we should elect officers, and if that is so I do not think it is in accordance with the Enabling Act.

Mr. Middleton of Custer: I withdraw my amendment.

The Clerk read the report of the judiciary committee on the proposition. as called for by Mr. Maginnis of Lewis and Clarke, as follows:

Resolution by Browne. "Resolved that the committee on judiciary of this convention be instructed to consider and report whether the Enabling Act of Congress provdies for the general election to be held before admission to fill all offices both state and county elected by the Constitution."

Report of judiciary committee:

Mr. President: Your committee on judiciary to whom was referred resolution herewith returned have directed me to report that they have examined the question referred to them and are of the opinion that the Enabling Act of Congress provides for the general election before admission to fill all the offices both state and county provided for by the constitution, but that such provision is not mandatory and that this convention has a right and power in its discretion to provide that all or any such district or county officers provided for by the constitution shall be elected at such time and for such terms as may be prescribed or provided that any district or county officers now holding office under the laws of the territory may continue in office under the constitution for such time as may be prescribed. Your committee are of the opinion that the whole matter is within the power of the convention to regulate. (Signed). W. W. Dixon, Chairman.

Mr Robinson of Deer Lodge. That, in our view of it, belongs as a provision by this amendment of the gentleman from Silver Bow County. It is provided in the fore parts of Section 24 of the Enabling Act that the constitutional convention may by ordinance, provide for the election of officers for full state government, including, etc. Now then, part of the officers for full state government, according to this Enabling Act are to be provided for by ordinance The committee on ordinance reported this ordinance back to this convention and asked the question whether or not these county officers should be elected at this election or what action should be taken upon them, and the committee left that to the convention without making any recommendation one way or the other Then that should come up in the convention on the report of the Committee on Ordinances. It was put to a vote, a few days ago on the last part of the file, to be one of the last things to be considered by the convention. The objection that I have to its being considered now, is, that it is out of place, and does not belong to the constitution, as would be the case if it was provided as proposed by this amendment. That is the reason I object to it going in here

Mr. Hartman of Gallatin: I should like to ask the gentleman who has just taken his seat if this is the proper place for it, or in your report why you did not make it a part of the report of your committee

Mr. Robinson of Deer Lodge. I will answer the gentleman that when we come to that part of it, instead of making a majority report and a minority report, after suggestions of a distinguished member of the committee, I held that back without making any recommendation on it, for the convention to take such action when considering the report as it saw fit. That was the reason assigned. Instead of making the minority report and a majority report, we made a report without any recommendation whatever.

Mr. Witter of Beaverhead. I call for the reading of the report that is on file in connection with proposition No. 24.

The Chairman: The resolution is resolution No. 6, read and referred to the committee on city, county and town organization on July 9th. Reported back withoout any recommendation and placed on file for consideration with main report of the committee. The report reads as follows: "All county and precinct officers who may be in office at the time of the adoption of this constitution shall hold their respective offices for the full term for which they may have been elected and until such time as their successors may be elected and qualified in accordance with the provision of this constitution and the laws now in force; and the official bonds of all such officers shall continue in full force and effect as if this constitution had not been adopted.

Mr. Burleigh of Custer. I happened to be present when the Committee on Ordinance met I think the third time and made their report; and the statement made by my friend Mr. Robinson, the gentleman from Deer Lodge County is as I recollect precisely correct, and the reasons he assigned are the reasons which influenced the committee in sending it back without a recommendation. Now, in regard to this amendment offered, I am greatly in favor of it and shall support it, and I shall do so for this reason, that I believe it to be just; I believe it to be just to the parties whom it affects; but whether it may be a question to be provided for by ordinance or to go into the constitution, there may be some difference of opinion. I cannot be accused of acting from any political motive, for the reason that nearly all of the county officers from our cuonty belong to the democratic party. I never have belonged to it, and unless there is some great change in the political moral status in my mind I do not think I ever shall (Laughter) I have lived to that time of life where, if all my political acts have been sinful transgressions, I believe it is now too late to repent. Now, these officers went into the election in good faith and believed they were elected for two years, and unless there is a great public necessity for putting them out I think it is morally wrong to do it. Our sheriff is a democrat; our county clerk is a democrat; our probate judge is a democrat—he seems to be fated anyhow, and there is no help for him—and our assessor is a democrat; and every other county officer almost is a democrat. I hold a position there I am not a democrat but it is not on that account that I support the measure. I think it is right that these men should remain there during their term of office, and I think it is proper. Now, while there may be some technical question in regard to whether this should go into a constitution or go into the ordinance, I do not believe that that should control the principle here. I feel a good deal like, and I am persuaded a good deal by a remark that I once heard an eminent old judge make, Judge Greer, in regard to determining close questions. A friend of his said to him, "Judge, I suppose you gentlemen who preside on the Supreme Court bench of the United States never have any question on regard to what is right?" "Oh, frequently, frequently," said he. "Well," said his friend, "but how do you determine them?" "Well," said he, "after examining the law and all the surrounding circumstances if I am still in doubt I appeal to the chancery of my own heart and I am scarcely ever mistaken in my judgment." Now I think every man here should look at the question in all its bearings, and just imagine himself in the same situation; and where there is no harm to be done in the State, I think there ought to be no question in determining it, aside from poiltical consideration, that these men should be entitled to hold their offices during the residue of their term.

Mr. Ramsdell of Missoula: I do not desire to advance any arguments on this subject. In fact I do not think the arguments of any of the speakers, nor even the logic of a Webster can change a single man's conviction on this matter. In fact, I do not think even the honest conviction and the venerable aspect of my aged friend who has just taken his seat can change our views. Personally I have been in favor of this proposition, but I doubt the expediency of it, and I shall vote against it, and when it is considered that I am losing the office of justice of the peace I think it will be some extenuation of my action, and I hope the scattering remarks of the gentleman from Yellowstone will lose their force. (Laughter and applause.)

Mr. Carpenter of Lewis & Clarke: Mr. Chairman, I am unable to see why section 24 of the Enabling Act should make any difference in our action on this question. If this amendment prevails I cannot see how section 24 of the Enabling Act has anything to do with it. If the amendment prevails these officers will be provided for by the constitution itself. They will not be up for election this fall: there will be no county officers elected this fall. The ordinance would be in use if the amendment did not prevail, and if the county officers were to be elected then perhaps the ordinance should state in their case as in all other cases the manner of the election, but as long as they are not to be elected it seems this should be the proper place for it, and any motion in the ordinance will be out of place. Now a word as to these offices. If the non-election of county officers or their continuance in office by the constitution affected in any manner the successful introduction of a state government, I should be in favor of a new election. No officer has a vested right to his office. But we must take into consideration the convenience of the people, and the system which we have adopted. To continue these persons in office until the expiration of their terms would be simply continuing the system which we have adopted by this constitution. When we adopt this constitution we adopt all the laws, or we will adopt all the laws applicable to these officers and their tenure of office Now, one or two things will be done. We would make two irregular terms, or we would continue these persons in office. It would be a term of one year, and then a term of three years. That breaks up the system and interferes with its harmonious operation. While these officers have no vested rights to their office, and the legislature can shorten their terms and take away their positions at any time it chooses, there is a political equity in their continuance: not as affecting one party or the other party, but a matter of what we termed political equity. But it is not injustice to these officers, that I am speaking. It is injustice to the people of the territory and the coming state that I make these remarks. If you cut short these terms and provide for a three year therm you run a great risk. Practically every person in office now whose term is cut short a year will be a candidate for re-election and will be renominated and stand a far better chance of re-election than if his term had not been cut short. Now there may be some excellent officers who may be elected for three years, but you cut short the term and those oofficers are quite certain to be re-elected and placed upon the people for three years longer. They will never be renominated again. It seems to me it is a matter of precaution of the

SIMON S HOBSON
GEORGE W STAPLETON
ALLAN R JOY
O. F GODDARD
LEWIS H HERSHFIELD
LUKE D HATCH
CHARLES R MIDDLETON

people more than it is for the protecting of these officers to have their continuance for two years until the terms for which they were elected expired.

Mr. Robinson of Deer Lodge In considering this matter before the Committee of the Whole at this time I am disposed to feel that these petty wranglings and petty decisions of the Committee of the Whole amount to nothing, and are a pure waste of time, for nothing in the world, for the purpose of allowing the members of the convention a chance to make some speeches. I do not care for it, but let it go into the convention where we can act upon it finally, it will amount to something and do some good. When we go over it time and time again it amounts to nothing These discussions in the Committee of the Whole have retarded the action of the convention for several weeks. Now, for the purpose of getting it where it belongs, I move Mr. Chairman that when this Committee rise to report this bill to the house they recommend that this amendment be considered in connection with the report of the Committee or Ordinance on this matter.

The motion was seconded

The Chair put the question on the said motion of the gentleman from Deer Lodge (Mr Robinson) and a vote being taken the same was declared carried.

Mr. Conrad of Choteau: I have an amendment to sectioon 11.

Mr. Warren of Silver Bow: I have another amendment to section 11.

The Chairman The gentleman from Choteau moves to amend section 11 by adding the following:

"Provided that no county treasurer shall be eligible to succeed himself, after being elected under the provisions of this constitution."

The motion was seconded.

Mr. Middleton of Custer: That would certainly be out of order. The committee have decided to report it back to the convention, to be considered with the report of the committee on ordinance.

The Chairman: The Chair understands that that referred to the amendment that was offered by the gentleman from Lewis & Clarke.

Mr. Robinson of Deer Lodge: That is what the motion extended to, and nothing else.

Mr. Conrad of Choteau asked the Chairman to return his amendment.

Mr. Collins of Cascade: I suggest that there is nothing in section 11 that in any way interferes with the proposition as to whether the county officers shall hold or not, and I suggest that that proposition alone be postponed and be considered in connection with the ordinance. But the other propositions in this section do not interfere at all with the main section. This section provided for county officers and for the term of their office, and it certainly belongs in this article. The question as to whether our county officers shall hold over or whether there shall be a general election is postponed, and I think that is the only thing that should be postponed. If we have an understanding as to that fact then we can adopt these sections 11, 12 and 14. This section 11 as I understand it does not interfere at all with the main question.

The Chairman· The question has been referred back with a recommendation that it be referred to the committee on ordinances.

Mr Collins of Cascade· I suggest that by unanimous consent it would be arranged that this article be gone through with, and recommended for passage, and that the main question as to whether or not the main officers shall hold or shall go to the committee on ordinance.

Mr. Luce of Gallatin· It is my understanding that the amendment only should be referred back, with recommendation that it be considered with the report of the committee on ordinance.

Mr. Robinson of Deer Lodge· Yes, sir, that was the motion.

Mr. Eaton of Park· I would ask the chair what motion the chair put and declared carried.

The Chairman: My understanding was that it referred to the section.

Mr. Maginnis of Lewis & Clarke. I ask unanimous consent that the vote just taken shall refer only to that portion referring to the election of officers, and that the rest of the section be considered.

Mr. Robinson of Deer Lodge: The motion that was made only went to the amendment.

Mr. Witter of Beaverhead: I move you then, that when we rise we report resolution No. 6., offered by Mr. Goddard, back with the recommendation that it be made part of the article on ordinance.

The motion was seconded.

The Chair stated the question.

Mr. Collins of Cascade called for the reading of the resolution.

The Clerk read the same.

Mr. Robinson of Deer Lodge: That was the motion that prevailed in the committee, and it embodied the same proposition as the motion now made by the gentleman from Beaverhead.

Mr. Witter of Beaverhead: I understand that that motion was that it be considered in connection with the report of the ordinance committee, and this motion is to make it a part of the article of ordinance.

Mr. Clark of Silver Bow: I understand that that had been recommended back to be considered in the Committee of the Whole in connection with the article on ordinance and not to be made a part of it.

The Chairman: I believe the motion now is that it be made a part of the ordinance.

Mr. Clarke of Silver Bow: I thought that motion was voted and carried.

The Chairman: That reference to Section 6 has reference to the Resolution No. 6, offered by Mr. Goddard.

Mr. Hershfield of Lewis & Clarke: I can see some propriety in instructing the committee what it shall do. While to some extent I favor the proposition contained in the resolution offered by the gentleman from Yellowstone, yet at the same time there is some propriety in letting it go back to the Committee on Ordinance, and allowing them to report to the convention, and then let the convention decide what to do with it. We do not want to tell them what the committee shall report.

Mr. Maginnis of Lewis & Clarke: I concur with my colleague from Lewis & Clarke: The Convention has a right to instruct a committee, or to refer a subject to it with instruction, but I submit that the Committee of the Whole has no right to instruct any committee what they shall do.

Mr. Witter of Beaverhead: I rise to a point of order. The motion did not so state at all. I did not ask to have it referred to any committee at all in my motion. It was to report it back with a recommendation that it be made a part of the article on ordinance.

Mr. Collins of Cascade: In order to bring this matter properly before the Committee of the Whole I move the following:

"Resolved that it is the sense of this Committee that a general election be had for all state and county officers at the time this constitution is submitted for adoption " I offer that as an amendment.

The amendment was seconded.

The Chairman: The Chair will not entertain the motion of the gentleman in connection with this resolution.

Mr. Kanouse of Meagher: I move to amend the motion now appending before the committee that when this committee rise they report this resolution just offered back to the house with the recommendation that it be considered in connection with the proposition on ordinance.

The motion was seconded.

The Chairman. It has been moved by the gentleman from Meagher, that when the committee rise they report this resolution just offered back to the house with recommendation that it be considered in conncetion with the proposition on ordiance This is an amendment to the motion of the gentleman from Beaverhead. Does the gentleman wish to accept it?

Mr. Witter of Beaverhead: I do not.

Mr. Eaton of Park: I would like to inquire whether that motion has not already beeen adopted by this committee?

The Chairman: For the information of the gentleman from Park I would state that this is the Goddard resolution that we are considering now—resolution No. 6 The question is that when this committee rise it report this resolution back to the convention with the recommendation that it be considered in connection with the report of the committee on ordinance.

The Chair put the said questioon on the mootion, of the gentleman from Meagher (Mr. Kanouse), and a division being called for the same was declared carried by a vote of 36 in the affirmative to 23 in the negative.

Mr. Conrad of Choteau: Now, Mr. Chairman, I would like to have my amendment to section 11 read referring to county officers.

The Chairman. The gentleman from Choteau wishes to amend section 11 by adding thereto the following:

"Provided that no county treasurer shall be eligible to succeed himself after being elected under the provision of this constitution."

Mr. Conrad of Choteau I think that is a wise provision to put in here. I do not think it is safe for county treasurers to succeed themselves five or six times. It is a safeguard placed around the public money. Let them go out after two years service, and if their accounts are made up all right they can wait two years.

Mr. Hartman of Gallatin: I would like to have the Chair decide this matter of section 11, whether it has been referred to the committee on ordinance or not.

The Chairman: No, the amendment as offered by the gentleman from Lewis & Clarke was referred to that committee. The section is still open before the committee. The question is on the adoption of the amendment offered by the gentleman from Choteau, which I believe was seconded.

The Chair put the said question on the motion of the gentleman from Choteau (Mr. Conrad), and a division being called for the same was declared lost by a vote of 22 in the affirmative and 32 in the negative.

Mr. Robinson of Deer Lodge: I have an amendment.

The ~~Chairman~~: This amendment is to section 15. The Chair will leave it aside for the present until we arrive at the consideration of that section. The gentleman from Gallatin, Mr Luce, now offers the following amendment, to section 11: amend by adding the words "one clerk of the District Court" after the word "taxes" in line 3.

The motion was seconded.

Mr. Marshall of Missoula: I believe Mr Chairman that the election of clerk of the District Court is provided for in the article that we have adopted on the judiciary.

Mr. Luce of Gallatin: I will withdraw my amendment.

Mr. Middleton of Custer: I move to amend by insterting after the word "taxes" in line 3 the words "one county attorney."

The motion was seconded.

Mr Luce of Gallatin: That is provided for.

Mr. Warren of Silver Bow: I sent up an amendment to Section 11 as follows: After the word "deeds" on line 2 add the words "and such other instruments as required to be recorded."

The Chairman Are there any further amendments.

Mr. Eaton of Park: I desire to offer an amendment to section 11. After the word "taxes" in line 3 "provided that the county treasurer shall have held his office for more than three consecutive terms.

The motion was seconded.

Mr. Hogan of Silver Bow: According to that a man would never be eligible to hold office for county treasurer except for four years.

Mr. Maginnis of Lewis & Clarke: I think the words "eligible for election but once" would cover it

The Chairman put the question on the motion of the gentleman from Park, (Mr. Eaton), and a vote being taken the same was declared carried.

Mr. Collins of Cascade: I move to strike out the words "of deeds" on line 2, so that t shall read "and ex-officio recorder."

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Cascade (Mr. Collins) and a division being called for the same was declared carried by a vote of 19 in the affirmative to 16 in the negative.

Mr. Whitehill of Deer Lodge: I have an amendment. On line 3 add after the word "taxes" and "ex-officio county superintendent of public schools," so that it shall read "the treasurer shall be collector of taxes, and ex-officio county superintendent of public schools."

The motion was seconded

The Chair stated the motion.

Mr. Whitehill of Deer Lodge: I think the office of county superintendent of the schools is a useless one. There are some things under the law as now established the county superintendent does that could as properly be performed by the County Treasurer. There is one duty performed that the county superintendent of school does, and that is that the census of the school children shall be taken by that officer It frequently happens that three or four children are put on the same list, and it is necessary some one should look after that Now that is really about the only important duty that I can conceive of that the county superintendent of schools is needed for at all. We have 25 or 30 pages on our statute books regarding this. and one-half of it is absolutely useless. Now, I do not find fault with any of the county superintendents. In our county we have a young lady who is a jewel, and I think has satisfied the county better than any superintendent of schools we have had, but I believe that these duties she performs could be dispensed with, and could be carried on without any County Superintendent. Now there are many of these duties that the county superintendent performs that the state ought to look after. The first duty is that she shall apportion the school money. Now I say the county treasurer should do that. I do not think the schools are benefited in the least by a county superintendent of schools. Now this idea which I have here has been adopted in some places. In some States the County Attorney is made ex-officio County Superintendent of Schools, and I think it very proper that that office should be abolished and the county treasurers should perform all the duties that are necessary to be performed.

Mr. J. R. Toole of Deer Iodge: I know it is not necessary to take up much time in discussing this matter. I only desire to say that my colleague from Deer Lodge County is not very familiar with the duties of the County Superintendent of Schools of today in this territory. I certainly believe that anything that will interfere with the progress of our school system in this country is a very bad move, either on the part of the legislature or this convention. I had the pleasure of attending an institute in our county last year, and I do not hesitate to say that I believe that the benefit derived to the schools of Deer Lodge County from that one session was incalculably more than the amount of the salary that the County Superintendent gets. There were young girls, and young men, and there was a gathering of teachers old and young discussing the different important matters; and this institute was presided over by the County Superintendent of schools. I know the County Superintendent visits our schools, converses with the teachers, many of them young and inexperienced, and she looks into their affairs, and she prompts them and helps them, and shows them where they are lacking, and shows them important methods of teaching; and I say I apprehend it is not necessary to take up any time in discussing this thing at all. I believe this convention is opposed to the amndment offered.

Mr. Burleigh of Custer: It occured to me when my friend was talking that he had, to use a very common place expression, the cart before the horse. Now if instead of the county treaseurer being authorized to discharge the duties of county superintendent of schools ex-officio, I think it would be perhaps more proper to charge the county superintendent with discharging the duties of county treasurer ex-officio. I am satisfied the duties would be discharged just as well. I admit that my friend from Deer Lodge, who is a good judge and never speaks without knowing what he is talking about, lives in a country where they have a jewel for county superintendent, but they are no more favored than we are in the lower counties. We would be all opposed to this thing down in Custer County, and if there is to be any shifting to the responsibility of the duties by virtue of an office, I am in favor decidedly of transferring the duties of the county treasurer to the county superintendent of schools. (Laughter)

Mr. Knowles of Silver Bow: I would like to know how they propose to pay this County Treasurer for performing the duty of the Superintendent of Public Instruction. The office of County Treasurer is paid usually by feeing, such a percentage on the amount of money he collects. Now, are they going to have him perform all the duties of County Superintendent of Schools without any compensation? My experience with officers has been that they perform very few duties unless they get paid for them. About the first six months after a man gets into an office he is very anxious about performing his duties, the rest of his time he is very anxious about how much pay he is going to get for performing them; and if you put those duties over upon the treasurer you will have very few duties performed. In the next place the qualifications for the two officers are different. One ought to be a person who is an accountant and business man and the other ought to be a person who is interested in public instruction and you don't often find these two classes combined in the same person. And these County Superintendents do have a good deal to perform; their duties have been stated here and a great many of them yearly keep up the spirit of the teachers—the esprite decorps of teachers in a county. They have to look over these matters and they are very necessary. There are teachers very often who are not capable of performing their duty. They have to make certain reports to the county superintendent and those reports have to be examined. County Superintendents have to keep a census of the children, and all such matters, and they are necessary matters. They have to make up the estimates for school appropriations. I trust that nothing of this kind will be done.

Mr. Reek of Deer Lodge: I certainly do not expect that this amendment will prevail. If I had any idea it would I should insist upon saying a good deal. But I think that the idea of the County Treasurer being ex-officio County Superintendent is somewhat ridiculous, and that it will quite be impossible for that officer to perform the duties, or to fill the office of County Superintendent of Schools.

Mr. Clark of Silver Bow: As has been well said here by some gentlemen who preceded me the office of County Superintendent of Schools is certainly one of the most important and responsible offices that will be created by this constitution if the office is allowed to remain. I believe that the duties of that office require a very competent person, and one who would devote all of his or her time to the discharge of the duty. I have seen the working of the office, or rather the duties of the office, to a considerable extent, and I know as has been stated by Mr. Toole that the good effects that grow out of a proper discharge of the duties of the office are remarkable; and besides the two offices would be inconsistent and incompatible. There are seasons of the year when the County Treasurer has his hands full, for instance the last two or three months of the year when tax gathering time comes around. We know there is a time there for several weeks when the County Treasurer has all that he and his corps of help can possibly do. Now, just about that time it might happen that one of these teachers institutes, which is also very important would come up, and it certainly would be impossible for the County Treasurer to exercise the duty of County Superintendent of Schools.

Mr. Rotwitt of Meagher: We had this same law on our statutes, and the legislature of 1881 abolished it. It was found to be very unsatisfactory as our population increased, and now as our population has doubled in most of the counties I think it would be still more unsatisfactory, and I hope this amendment will not prevail.

The Chairman: The question is on the proposition to amend section 11 by adding on line 3 after the word "taxes," the words "and ex-officio County Superintendent of Schools," and on the same line to strike out the words, "one" after the word "taxes."

The Chair put the question on the said motion of the gentleman from Deer Lodge, Mr. Whitehill, and a vote being taken the same was declared lost.

The Clerk then, read section 12 as follows: No person shall be eligible to any county office unless he is a qualified elector, not unless he shall have resided in the county at least one year next preceding his election.

Mr. Cooper of Gallatin sent up an amendment to section 12.

The Chairman: An amendment is offered to section 12 by the gentleman from Gallatin as follows Strike out the word "qualified elector" and insert "citizen of the State"

The motion was seconded.

The Chair stated the question.

Mr. Clark of Silver Bow: I would like to inquire what "citizen of the state" means. We have recognized in this constitution I believe, citizens of the United Staes, but I do not understand what "citizens of the state" means.

Mr. Cooper of Gallatin: I understand the citizen of the state to be a person that is a full fledged citizen, not a person that has taken out his first papers, but one that has completed his citizenship.

Mr. Goddard of Yellowstone. My understanding is that a citizen of the state is one who has come to this state with the intention of residing here permanently A citizen might be a citizen of the state if he only had resided here one day, if he has the intention of making it his permanent residence. Now, there is a provision in the suffrage proposition which makes it absolutely certain that a woman can hold the office of county superintendent, I would object to this amendment. I believe however that that has been provided for in the propostion on suffrage, that the office of county superintendent may be filled by a woman. I believe the proposition as it is printed is proper, and it should be adopted.

Mr. Hogan of Silver Bow: If you make this change in here it will be somewhat conflicting with the qualifications of persons to hold office, which were adopted in the article on suffrage. According to the qualifications on that article, any person that is a qualified voter can hold office, so I think if you make this change here, while I certainly favor it, you will have to do something with the other changes. Instead of being a "citizen" in the other requirements, it is "qualified electors," and if you insert that here is would certainly conflict with that.

Mr. Witter of Beaverhead: I offer an amendment to section 12.

The Chairman: The gentleman from Beaverhead offers the following amendment: Add to section 12 "except as otherwise provided in this constitution."

The motion was seconded.

Mr. Witter of Beaverhead: I find in article 21 on judiciary that section 12 will come somewhat in conflict with that, as well as in conflict with the office of county superintendent of public schools, and I should think that that would harmonize the whole matter.

Mr. Craven of Lewis & Clarke: I beg to call the attention of the committee to section 7, proposition No. 14 as it has been adopted.

Mr. Cooper of Gallatin: With the consent of my second I will withdraw my amendment.

The Chairman: The gentleman from Gallatin withdraws his amendment.

Mr. Hershfield of Lewis & Clarke sent up an amendment.

The Chairman: The gentleman's amendment (Mr. Hershfield) does not apply to the one offered by the gentleman from Beaverhead.

Mr. Hershfield of Lewis & Clarke: Is there an amendment before the committee now?

The Chairman: Yes, sir: the question is on the adoption of the amendment offered by the gentleman from Beaverhead to add to section 12 the words "except as otherwise provided in this constitution."

Mr. Craven of Lewis & Clarke: I beg the indulgence of the committee. I would like to read section 7 of proposition No. 14 on suffrage: "no person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States, and who shall not have resided in this state, at least one year next preceding his appointment or election." I understand that this has been adopted by the convention.

Mr. Hogan of Silver Bow: Read section 11. You will see some difference.

Mr. Witter of Beaverhead: That is true. At the same time it here states the qualifications of any one relative to county officers. That speaks of territorial qualifications, or state qualifications, and this speaks of the county; so that I would think that the addition to that section would make it harmonious with even the section quoted by the gentleman from Lewis & Clarke.

Mr. Craven of Lewis & Clarke: My idea was that the terms "office in this State" would comprehend county officers.

Mr. Luce of Gallatin: Section 10 of Proposition No. 14 reads as follows: "Women shall be eligible to hold the office of cunty superintendent of schools, or any district office, or to vote at any school election." I think that was adopted, and this section 12 should be amended in some way so as not to conflict with that.

Mr. Hickman of Madison: I move to strike out section 12.

The motion was seconded.

Mr. Hartman of Gallatin: It seems to me that the amendment offered by the gentleman from Beaverhead covers the matter.

The Chairman put the question on the said motion of the gentleman from Beavehead, (Mr. Witter), and a vote being taken the same was declared carried.

Mr. Hershfield of Lewis & Clarke sent up an amendment.

The Chairman: The gentleman from Lewis & Clarke (Mr. Hershfield) proposes the following amendment: Strike out the word "one" and insert the word "two" in line 2 after the word "least" and add the letter "s" to the word "year."

The motion was seconded.

Mr. Hershfield of Lewis & Clarke: It is hardly worth while to take up the time of the convention on the propriety of that amendment. It certainly ought to be provided for that the person who seeks an office ought to become acquainted with the office, and the duties of an office, and it is hardly possible for any individual, no matter how much of a genius he may be, to be sufficiently acquainted with the affairs of the locality in which he has made his home to entitle him to hold office, if he has resided in it but one year I think the amendment is quite appropriate

Mr. Burleigh of Custer· There is one objection, and a very serious one, that I have to this amendment. Now my friend from Deer Lodge says it is impossible for a man to becone sufficiently qualified to attend to the duties of his office or the business of the county unless he has lived there two years. Now suppose a man happens to live right down in the upper part of Gallatin County; he had been there for twenty years, he is familiar with all the duties of a county office there; will he undertake to say that if a man moves from Gallatin County into some other county that it is necessary for him to live there two years before he is qualified to perform the duties of a county office It seems to me there is no reason in that; it seems to me that the facts would not justify his position under circumstances of that kind: and how may men are there that change from one county to another that are familiar with the transaction of business in the different counties. I do not think any argument is necessary to defeat the matter.

Mr. Bullard of Jefferson: It seems to me that proposition was settled in proposition No. 14, Section 7, "no person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States and who shall not have resided in this State at least two years next before his election or appointment"

Mr. Hershfield of Lewis & Clarke· This is a county matter. It relates to county affairs, and it is the very proposition that I want to defeat, the very proposition that the gentleman so eloquently expressed when he said that there are professional office seekers, when they are unsuccssful in one county will go over to another county, if the chances are better for them there.

Mr Burleigh of Custer: I do not think the majority of the counties are afflicted with professional office seekers after you get forty or fifty miles from this locality (Laughter)

The Chair put the question on the amendment offered by the gentleman from Lewis & Clarke (Mr. Hershfield), and a vote being taken the same was declared lost

Mr. Carpenter of Lewis & Clarke I move to strike out section 12.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr Carpenter) and a vote being taken the same was declared carried.

The Clerk read section 13 as follows: "The Legislative Assembly shall provide for the election or appointment of such other county, township, precinct, municipal officers as public convenience may require, and their terms of office shall be as prescribed by law, not in any case to exceed two years, except as in this Constitution otherwise provided."

Mr. Rickards of Silver Bow. I move to strike out Section 11, and to amend Section 13 by inserting after the word "of" on line 1 the word "all," and strike out the word "other" on line 2. I belive that section 13 as thus amended will cover all of sections 11 and 13, and certainly in a great deal fewer words. It would then read, Mr. Chairman, "the Legislative Assembly shall provide for the election of all such county, precinct, and municipal officers, etc." I think that section 11 is certainly superfluous.

Mr. Whitehill of Deer Lodge: I move to strike out section 13 for the same reasons that I gave last night. The legislature has the power now to perform every act prescribed in section 13 without any action on the part of this convention whatever, and for the very reason that these sections were striken out last evening I move that this section be stricken out.

Mr Middleton of Custer: It seems to me that the motion of the gentleman from Silver Bow should prevail. I think there ought to be some provision in here touching the matter of county officers. I do not think it should define or specify what those officers should do. That matter should be left to the legislature; and striking out section 11 and amending section 13, I think it would be about right. I do no think it is proper to strike the entire matter out.

Mr. Witter of Beaverhead called for the reading of the amendment.

The Chairman: The amedment as offered by the gentleman from Silver Bow is to strike out all of section 11 and to amend section 13 as follows: add the word "all" after the word "of" in line 1, and strike out the word "other" in line 2.

Mr. Burleigh of Custer: I move Mr. Chairman to strike out the word "shall" in Section 13, line 1, and substitute therefor the word "may."

The Chairman: That amendment is not germane to the one offered by the gentleman from Silver Bow. I shall put the amendment of the gentleman from Silver Bow first.

Mr. Goddard of Yellowstone: If the amendment of the gentleman from Silver Bow prevails it will be in conflict with the Judiciary Act. The Judiciary Act provides for the election of certain county officers—county attorney and clerk of the Court, and if you leave that to the legislature as proposed by the gentleman from Silver Bow, it will be in conflict with that Act, and I believe one or two other acts.

Mr. Rickards of Silver Bow: I think the gentleman from Yellowstoone (Mr. Goddard) is certainly mistaken; for instance, one gentleman thought they had not enumerated the name of the District Court, and he attempted to amend that section, but his attention was called to the fact that there was provision made for that office elsewhere; and now it seems in section 13 this committee had in mind the fact that some county officer had been overlooked. Now I believe if my amendment prevails it will cover everything that is covered in Section 11 and Section 13 and certainly in very much fewer words; it covers the ground entirely and more intelligently. I may be wrong, but that is my Judgment and opinion.

Mr. Luce of Gallatin: It is the duty of this Convention to establish a government for the State of Montana, and these officers that are enumerated in Section 11 are certainly necessary for the establishment of such government. In the meantime I would ask what would we do for county organizations—county officers, if they are not provided for by this constitution. It happens in the Judiciary Act that two county officers are provided for; one is the clerk of the district court and the other the county attorney, and this is supplementary to that and provides for all the other officers that are necessary for a complete county organization. It is just as necessary that these county offices should be organized as it is for the State to be. It is our duty to make county organizations as well as state organizations, and we have not half done our work in my opinion if we do not provide for county organizations.

The Chair put the question on the adoption of the amendment offered by the gentleman from Silver Bow (Mr. Rickards) and a vote being taken the same was declared lost.

Mr. Whitehill of Deer Lodge: I now renew my motion to strike out.

Mr. J. K. Toole of Lewis & Clarke: I have an amendment to this section.

The Chairman: The gentleman from Lewis & Clarke moves to strike out section 13 and substitute the following: the term of any officer hereafter created by law shall not exceeed two years, except justices of the supreme court.

The motion was seconded.

Mr. Robinson of Deer Lodge: I trust that will not prevail. It clashes directly with the provision already adopted by this convention, in regard to district judges and clerk of the district court, which has already been determined and settled.

Mr. Goddard of Yellowstone: It also conflicts with the proposition we have adopted in relation to county commissioners. My understanding is that we have adopted a section here which provides that the county commissioners shall be elected for four years.

Mr. J. K. Toole of Lewis & Clarke: I think I will withdraw my amendment.

The Chairman: The gentleman withdraws the substitute and the question now is on the motion of the gentleman from Deer Lodge to strike out the section.

The Chair put the question on the motion of the gentleman from Deer Lodge, Mr. Whitehill, to strike out, and a vote being taken the same was declared lost.

Mr. Burleigh of Custer: I now renew my motion to strike out "shall" in the first line and insert "may," so as to take the dog collar off the legislature, and not put it on.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer (Mr Burleigh) and a vote being taken the same was declared carried.

The Clerk read Section 14 of Proposition No. 24 as follows:

The compensation of all county, township and precinct officers, except as in this constitution otherwise provided, shall be prescribed by law.

Mr. Robinson of Deer Lodge: I wish to amend the section

The Chairman The gentleman from Deer Lodge, Mr Robinson, moves to amend the section by adding after the word "the" on line 1 the words "duties and."

The motion was seconded.

The Chair put the question on the motion of the gentleman from Deer Lodge, Mr Robinson, and a vote being taken the same was declared carried.

Mr Luce of Gallatin sent up an amendment.

The Chairman. The gentleman from Gallatin moves the following amendment to section 14, by striking out the words "except as in this constitution otherwise provided".

The motion was seconded

The Chair stated the motion.

Mr. Luce of Gallatin My object in that is to avoid using superfluous language. Any provision of this constitution would be law, and it is all covered by the expression "shall be as prescribed by law."

The Chair put the question on the motion of the gentleman from Gallatin, Mr. Luce, and a vote being taken the same was declared lost.

Mr Witter of Beaverhead: I move to strike out section 14.

The motion was seconded.

The Chairman: There is a substitute that has been on the desk for some time, and it will take precedence. The substitute is a substitute for Section 14 offered by Mr. Collins of Cascade as follows: "All state and county officers and clerks of court shall be paid by salary to be fixed by law, and all fees shall be collected and disposed of as provided by law. The compensation of township and precinct officers shall be as provided by law."

Mr. Rickards of Silver Bow I move the adoption of that substitute.

The motion was seconded

Mr. Robinson of Deer Lodge. I do not know whether the mind of the convention is clearly set upon that. I think the section as it stands now is much better than the amendment to it. It leaves it entirely discretionary to the legislature and this amendment is the kind of legislation that ought to be left to the discretion of the legislature to say whether they shall be paid by salary or prerequisites.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Rickards, to adopt the substitute offered by the geneleman from Cascade, Mr Collins, and a vote being taken the same was declared lost.

Mr. Witter of Beaverhead: I renew by motion to strike out section 14.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Beaverhead, Mr. Witter, and a vote being taken the same was declared carried.

Mr. Loud of Custer I move that the committee take up Propostion No. 21, General File No. 38, Article on Corporations other than Municipal.

The motion was seconded

The Chairman: The Chair cannot entertain the motion.

Mr. Rickards of Silver Bow I move that when the committee rise that it report back Proposition No. 24 with the recommendation that as amended it do pass.

The motion was seconded.

The Chairman: The Chair cannot entertain the motion for the reason that there are certain propositions here to be considered in connection with this article

Mr. Rickards of Silver Bow I withdraw my motion.

The Chairman: Genereal Files Nos. 9, 10 and 20 were to be considered with this report. No. 20 was considered last evening and disposed of, so that Nos. 9 and 10 will now come up for consideration. The Clerk will read General File Nos 9 and 10.

The Clerk read as follows:

Extract No. 2, Resolution No 13, introduced by Buford, relating to terms of offices of county and municipal officers, July 15th received, read, and referred to committee No. 10 on city, county and town organization. July 17 reported back adversely and placed on General File No. 9.. "Resolved, that the following be incorporated as a provision in the constitution and be properly numbered. "No county or municipal officer shall hold office for more than two consecutive terms"

The Chairman: Gentlemen, you have heard the resolution as read by the Clerk, which was offered by Mr. Buford of Madison and which was to be read and considered in connection with this report. What is the pleasure of the committee?

Mr. Rickards, of Silver Bow: I move when the committee rise they report back this resolution with the recommendation that it do not pass.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Rickards, and a vote being taken the same was declared lost.

The Clerk read Resolution No. 10 as follows:

"Establishment of new county." Read and referred to Committee on City, County and Town Organizations. July 17, reported back adversely and placed on General File No. 10. "Resolved that in the creation and establishment of counties they shall be named in regard to mountain range, river or other appropriate natural features of the country in the vicinity of proposed new counties." Presented by Kennedy of Missoula.

Mr. Maginnis of Lewis & Clarke: I move the adoption of the resolution.

The motion was seconded.

The Chair stated the motion.

Mr. Burleigh, of Custer: I would like to add an amendment to that—"as far as practicable" It may be impossible to do that in a great many instances, but where it is possible to do it I think it ought to be done.

Mr. Maginnis, of Lewis & Clarke: I think the name of the county ought to have something descriptive of its locality, and we have nearly always followed that practice here. Wherever we have departed from it I believe we have done wrong.

Mr. Chessman, of Lewis & Clarke: It seems to me this is a very proper matter to leave to the Legislature. I do not believe it ought to go into the constitution.

Mr. Middleton, of Custer: It seems to me it is a good deal of a matter of sentiment instead of fundamental law, and I do not believe we want any more sentimentality in our constitution than can be helped.

The Chairman: The question is on the adoption of the amendment offered by the gentleman from Custer, Mr. Burleigh, to add the words "as far as practicable."

The Chair put the question on the said amendment offered by the gentleman from Custer, and a vote being taken the same was declared lost.

The Chairman: The question now occurs upon the adoption of the resolution.

The Chair put the question on the adoption of said resolution, and a vote being taken the same was declared lost.

The Chairman: There is another extract from Proposition 27 offered by A. R. Joy, on Chinese Labor. It is to be considered in connection with the report of this committee. The Chair will read the section. "The Legislature shall delegate all necessary power to the incorporated cities and towns of this state for the removal of Chinese without the limit of such cities or towns, or for their location within prescribed portions of those limits."

Mr. Hogan, of Silver Bow: I move its adoption.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Hogan, and a division being called for the same was declared lost by a vote of 20 in the affirmative and 27 in the negative

The Chairman: Are there any further amendments?

Mr. Witter, of Beaverhead: I move you that when the committee rise, it report back this proposition, with the recommendation that it do pass, with the exception of that part that was referred.

The motion was seconded.

Mr. Middleton, of Custer: I move to amend the motion by moving that when the committee rise it report the proposition back without recommendation. It seems to me that the committee last night acted somewhat hastily in the matter of striking out, and I really think that when it is considered again those sections should be reinstated. I move to report it back without recommendation.

The Chairman: Will the gentleman from Beaverhead accept that amendment?

Mr Witter, of Beaverhead No sir

The motion to amend moved by the gentleman from Custer, Mr. Middleton, received no second

The Chairman It has been moved and seconded that when the committee rise it report this proposition back with the recommendation that it do pass as amended, with the exception of such parts as have been referred.

The Chair put the question on the said motion of the gentleman from Beaverhead, Mr. Witter, and a vote being taken the same was declared carried.

The Chairman· What is the further pleasure of the committee?

Mr. Burleigh, of Custer. I move the committee do now rise.

Mr. Eaton, of Park: I move as a substitute that the committee consider Proposition No. 31 "Article on Corporations other than Municipal."

The Chairman· The Chair is of the opinion that the Chair cannot entertain a motion to consider any other proposition.

Mr. Eaton, of Park· I understand we went into Committee of the Whole for the purpose of considering the General File.

Mr. Callaway, of Madison: I move the committee do now rise.

The motion was seconded.

The Chair put the question on said motion of the gentleman from Madison, Mr. Callaway, and a vote being taken the same was declared carried.

IN CONVENTION

President Clark in the Chair.

The Convention was called to order.

Mr. Kennedy of Missoula: Mr President, the Committee of the Whole have had under consideration Proposition No. 24, and in connection with this have considered General Files Nos. 9, 10 and 20; also Proposition on Chinese Labor, which was referred to this committee; and have instructed me to report the article back with the recommendation that it do pass as amended with the exception of such parts as have been referred to other committees.

The President: Gentlemen of the convention, you have heard the report of the Chairman of the Committee of the Whole If there be no objection the report will be received, and the Chairman granted time in which to prepare his report.

Mr. Eaton, of Park: I move the convention resolve itself into the Committee of the Whole for the consideration of Proposition No. 31.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Park, Mr Eaton, and a vote being taken the same was declared carried.

The President called Mr. Carpenter, of Lewis & Clarke, to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Carpenter, of Lewis & Clarke, in the Chair.

The committee was called to order.

The Chairman· The committee has under consideration Proposition No. 31, Article on Corporations other than Municipal. The Clerk will read Section 1.

The Clerk read Section 1 as follows:

Section 1. "All existing charters or grants of special or exclusive privileges, under which the corporators or grantees shall not have organized or commanded business in good faith at the time of the adoption of this constitution, shall thereafter have no validity."

There being no amendment to Section 1, the Clerk read Section 2, as follows:

Section 2. "No charter of incorporations shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the state; but the Legislative Assembly shall provide by general law for the organization of corporations hereafter to be created. Provided, that any such laws shall be subject to future repeal or alteration by the Legislative Assembly."

There being no amendment to Section 2, the Clerk read Section 3, as follows:

Section 3. The Legislative Assembly shall have power to alter, revoke or annul any charter or incorporation existing at the time of the adoption of this constitution, or which may be hereafter incorporated, whenever in its opinion it may be injurious to the citizens of the state.

There being no amendment to Section 3, the Clerk read Section 4, as follows:

Section 4. "The Legislative Assembly shall provide by law that in all elections for directors or managers of incorporated companies every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other company.

There being no amendment to Section 4, the Clerk read Section 5, as follows:

Section 5. "All railroads shall be public highways, and all railroad, transportation and express companies shall be common carriers, and subject to legislative control, and the Legislative Assembly shall have the power to regulate and control by law the rates charged for the transportation of passengers and freight by such companies as common carriers from one point to another in the State. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this State, and to connect at the State line with railroads of other States and Territories. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad.

There being no amendment to Section 5, the Clerk read Section 6, as follows:

Section 6. "No railroad corporation, express or other transportation company, or the lessees or managers thereof, shall consolidate its stock, property or franchises with any other railroad corporation, express, or other transportation company owning or having under its control a parallel or competing line; neither shall it in any manner unite its business or earnings of any other railroad corporation."

Mr. Breen, of Jefferson, sent up an amendment to Section 6.

The Chairman: The gentleman from Jefferson offers the following amendment, which the Clerk will read.

The Clerk read as follows: "Nor shall officer of such railroad, express or other transportation company act as an officer of any other railroad, express or any other transportation company owning or having control of a parallel or competing line."

Mr. Breen, of Jefferson: I move the adoption of the amendment

The motion was seconded.

The Chair stated the motion.

Mr. Breen, of Jefferson: I copied that from the constitution of the State of Pennsylvania, and where they have competing lines of the railroad, and where they have 2 or 3 lines of railroads under the same management. We have railroad lines in the Territory of Montana, and we want to keep them under separate management. That is the reason I offer it and move the adoption.

Mr. Collins, of Cascade: I believe if you adopt Section 6 as it is, which will prohibit all express companies or corporations of this kind uniting with competing companies that this amendment will be germane and should be adopted also. There is no use prohibiting corporations if you do not prohibit the persons. I think the section is a little too harsh, but if it is to be adopted I believe the amendment of the gentleman from Jefferson is good.

The Chair put the question on the amendment of the gentleman from Jefferson (Mr. Breen).

A vote being taken the same was declared carried.

There being no further amendments to Section 6, the Clerk read Section 7, as follows:

Section 7. "All individuals. associations and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation or express route in this State. No discrimination in charges or facilities for transportation of freight or passengers of the same class shall be made by any railroad or transportation or express company between persons or places within this State; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad or transportation or express company shall be allowed to charge more toll for the transportation of freight or passengers to anv place or station upon its route or line than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this State No railroad, express or transportation company, nor any lessee, manager, or other employe thereof, shall give any preference to any individual, association or corporation in furnishing cars or motive power or for the transportation of money or other express matter.

There being no amendment to Section 7, the Clerk read Section 8, as follows:

Section 8. "No railroad, express or other transportation company, in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation, without first filing in the office of Secretary of State an acceptance of the provisions of this constitution in binding form."

There being no amendment to Section 8, the Clerk read Section 9, as follows:

Section 9. "The right of eminent domain shall never be abridged, nor so constructed as to prevent the Legislative Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals; and the public powers of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general wellbeing of the State.

There being no amendment to Section 9, the Clerk read Section 10, as follows:

Section 10. "No corporation shall issue stocks or bonds, except for labor done, services performed or money and property actually received, and all fictitious increase of stock or indebtedness shall be void The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock, first obtained at a meeting held after at least thirty days' notice given in pursuance of law."

Mr. J. K. Toole, of Lewis & Clarke: I offer an amendment to be numbered 11.

The Chairman: The gentleman from Lewis & Clarke, Mr. Toole, offers as an amendment the following: "Add the following as Section 11. I have renumbered the remaining sections to correspond" The Clerk will read.

The Clerk read as follows:

"Each stockholder of a corporation for joint stock association shall be individually and personally liable for such proportion of all its debts and liabilities if contracted and incurred during the time he was the stockholder as the amount of stock or shares owned by him bears to the whole of the specified capital stock or shares of corporations or associations. The directors or trustees of corporations and joint stock associations shall be jointly and civilly liable to the creditors and stockholders for all moneys embezzled or misappropriated by officers of such corporation or joint stock associations during the term of office of such directors or trustees."

Mr. J. K. Toole, of Lewis & Clarke: I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

Mr J. K. Toole, of Lewis & Clarke: I think that ought to go in the constitution. It is, I believe, the law in nearly every state of the Union. The law of this Territory makes a stockholder of a joint stock company or corporation liable only for the amount of incompleted stock in the concern. Now, under the laws which obtain here, pretty nearly everything in this Territory is run into a corporation. It seems to me a sort of panacea for all tickets and conditions of commerce and everything else. There is the provision in California. I have found from more experience in the matter that many of the states provide for just what purpose a corporation may be credited and for no other, but here, under our laws, it seems that a corporation may be credited for any purpose—the cigar stand, the real estate agency, a grocery store, a drygoods store, and everything possible which may be comprehended under the term "Industrial Purposes." And I have ascertained further that in undertaking some judgment, amount $200 or $300, against an individual supposed to be worth $250,000 or $300,000, not a dollar's worth of property against which an execution would run could be found upon which to levy; everything was conveyed to the incorporation, and in many instances the property itself, if it is a real estate concern, where the property represented by the corporation was $10,000, the property was conveyed at once to the corporation for that consideration. And the stock of the concern issued as fully paid up stock and yet that concern is permitted to transact business in the community without any sort of personal liability so far as it stockholders are concerned. I think it is wrong in principle, so far as I know no better provision than that can find its way into the constitution.

Mr. Clark, of Silver Bow: It seems to me that the gentleman from Lewis & Clarke County in moving this amendment certainly has not studied very well the effects such a provision as this would produce. Now, sir, if you adopt a provision like this in the constitution of Montana, you will not only drive all foreign capital invested in the state away, but you would prevent any further inquiries of foreign capital in this country Now, it is the object and to the advantage of corporations—the mining corporation, commercial, agricultural and all other kinds of industrial corporations, if they are founded upon the legitimate basis—and I believe that Montana is as free from wildcat operations, and probably much more so, than any other state or territory in the west—I believe we can safely say that there are less wildcat forgement institutions than are incorporated, or that are sought to be thrust upon the public in state or in the territory of Montana than anywhere else in the western country—and it is a great advantage to promoters of the legitimate enterprises of this character to be enabled to sell their shares in the eastern markets. Look at the "Boston and Montana" in Butte—"The Poorman's" down here in Idaho—and I might cite you 100 other legitimate enterprises in the State of Montana. I think with this provision in the constitution I undertake to say that that stock would come rolling back to Montana to be sold for whatever they could get for it. My reasons are these. Gentlemen who have been associated with corporations of this character well know that frequently it happens that the management of a corporation goes into the hands of a minority of the representation of the stock, but allowing that a majority has the management of the affairs, what protection has the 49%, we will say, of the stockholders got when the management of the property is entirely out of their hands and in the hands of the persons holding 51% of the stock; and these men may go on operating the business of that corporation and fraudulently absorbing all of its assets, and these innocent stockholders on the outside have no remedy whatever except to rush into the market and sell their stock. I say it is an unfair proposition and it will work to the detriment of all of our corporations in this country where they seek to sell the shares of other companies in the foreign markets or the eastern markets. Now, there has been a great deal of stress laid on the proposition that when Montana enters as a state we are to be taken out of the restrictions of the alien law. We know well that millions of dollars that would have been invested in the territory of Montana did not come here because they had no protection under this alien law; but let us pass an ordinance like this or engraft into the constitution of the state such a provision as this, and you could not sell one share of a corporation in the markets of the old world, nor, could you in the markets of the United States outside of perhaps a few people who might be identified with the management of the business. I say that if you adopt this principal you are going to embarrass and handicap every enterprise in this country which seeks to have its business carried on under the act of incorporation.

Mr. Stapleton, of Silver Bow: Mr. Chairman, I believe if you adopt this section that you will ruin half the corporations in this territory.

I do not believe it is possible to enter into any corporate business with a section like this. I believe that our present law as it exists upon the statute book is the best that can possibly be framed in regard to corporations, and this is the first complaint that I have ever heard in regard to the workings of our present law Now, it must be admitted that the party who deals with corporations has the same protection as the party who deals with an individual, for the reason that a corporation is only an individual, and they have the same opportunity of finding out and knowing what the responsibility of an individual is. The records are open, and they can find out, and know what property is owned by a corporation the same as an individual. The argument that my friend, Mr. Toole, made would apply equally to an individual as to a corporation. Every lawyer knows that that very often happens, and yet that is no argument why corporations should not be allowed to do business on the same basis. Now, Mr. Chairman, under our present law as we have in Montana territory, and as it will be left by the laws that we are now considering, no one is liable for the debts of the corporation except so far and to the extent of its unpaid capital stock. If he subscribes for the capital stock of a corporation he must pay that stock in, otherwise he is liable to the extent of that unpaid stock. That is perfectly right and proper, because the supposition is that when he has paid the stock he has paid the value of it. Now, suppose that when you open stock books a party purchases stock, and he pays his money in good faith. Then he has done all that any honest man should be required to do, and the corporation has the management of that money; it has been put in their hands Now, Mr. Chairman, if you say that notwithstanding he has paid his money in in good faith—if you say that he shall be liable for the debts of that corporation, it appears to me that there is no man who would consent to invest in any corporate enterprise in the world. The stock of any incorporation under our laws is personal property, and you can go into the market and purchase a thousand or ten thousand shares of the stock; you may hold it an hour, or a week, or a year. Now, this section provides that every party holding the stock should be liable for all the debts of that corporation while he holds such stock. Now that corporation may be indebted ten thousand or one hundred thousand dollars; he holds that stock for an hour and then sells it, or a week and sells it; and during this time this debt may exist and a hundred different persons may have held that stock, and when it comes to enforcing this indebtedness, it appears to me that the utmost confusion would prevail, it appears to me the only thing that anyone should require is that when a person shall pay the money in good faith and actually owns part of the corporation, that you should deal with the corporation the same as any other individual. now the only exception that we have for that under our law is providing that where a person owns mines that a company may be incorporated and that the mine may be exchanged for the stock, that is, that you may purchase the mine with the stock When a company is incorporated it has the stock, but it has no property. Now. you can exchange the stock for a mine, so that the corporation will have the mine and the man who formerly owned the mine will have the stock. Then the company owns the mine and the man can sell the stock and do whatever he sees fit to do with it That is the way the most of the mining corporations in the territory of Montana have been conducted. The stock may be very valuable afterwards, that depends on the value of the mine which is given for the stock. Now if you say after the stock has been exchanged for the mine or for a dozen mines, that everybody who handles that stock must be responsible for the debts of that corporation. I feel that I never would purchase a share of stock in the world if I had to be responsible for the debts of the corporation, because there are very few of us who have any opportunity of knowing the indebtedness of that corporation at the time we purchase stock; and as my colleague, Mr. Clarke, said, when you go to sell stock outside of the territory it would be a death blow right at the start. I believe you might just as well say in this constitution that there never shall be a corporation organized in the territory of Montana, because I do not believe that any one will buy the stock. The gentleman from Silver Bow, Mr. Clarke, has well shown that all these foreign corporations will be driven out, and I must say that while it may be possible to put this in the constitution, or the laws of the state, or the territory, I do believe that it is the most vicious section that has been sought to be placed in this constitution since this convention began. I believe that as it stands it is much better, and I therefore hope the amendment will not prevail.

Mr. Robinson of Deer Lodge: I desire to amend the amendment of the gentleman.

The Chairman: The gentleman from Deer Lodge wishes to amend the amendment of the gentleman by inserting the following:

The Clerk read as follows:

"Unless each stockholder shall have paid into the company the par value of such stock in money or property at its actual cash value."

Mr. Burleigh of Custer: I have never been accused of entertaining any extraordinary partiality to the corporations. A corporation has been defined as being an invisible, intangible being existing only in contemplation of law. I think Chief Justice Marshall came to some such definition as that. But I think John Randolph of Virginia came nearer to it when he stated in Congress that a corporation—and he did not like a corporation either any too well—that a corporation was "an invisible, intangible being, with nobody to be kicked, no soul to be damned;" and that has been my idea of a corporation; and yet a corporation has shown itself to be useful and indispensible to the progress of the world's affairs today. I know that there are many good men, pure men, honest men, Congressmen and Christian men who are large stockholders in corporations, and when I have witnessed their transactions I have sometimes supposed that these devout men went in there for the sake of participating in some outside legitimate business because it yielded more profits than any individual enterprise, and for the further reason that there was nobody to be kicked and no soul to be damned. But since we have recently made a great effort, and a great stride towards accomplishing the introduction of foreign capital here and have declared in our constitution that it shall be—have declared in our constitution that it shall come here and enjoy the same rights that are enjoyed by citizens of the country, it seems to me that it is playing hot and cold, fast and loose, after incorporating that provision in our constitution to turn around now and undertake to put an embargo upon their coming here, for that is just what it is I know my friend Mr. Clarke or Mr. Stapleton stated here this would prevent the investment of foreign capital or eastern capital in the development of the resources of this country. For instance, a man says "here I get into a corporation, and if there is any mismanagement I am not only going to lose my stock, but I am liable to be beggared"; and it has been the experience of this country for years past that where there are personal liability to the extent that my friend from Lewis & Clarke proposes, that it has been almost impossible to get any corporate stock taken; and in-as-much as Montana is situated as it is, and that our resources can only be brought out by the largest expeditures of money and the greatest degree of energy and enterprise, it seems to me that, in-as-much as we have opened the doors to foreign capital and foreign capitalists here, that we ought not to make a "fake" of it. I am satisfied that the constitution carried out in good faith with a provision inviting foreign capital here, and with a plentiful supply of money in the old world and in the East that those men will come here and invest their money; and there is one particular thing, that when a man finds that he has got on the scent of a gold vein or a copper vein, he will stick to it through thick and thin. There is something in human imagination to go in and perhaps unguardedly to leave their money. But we are not working for the nabobs of the east, we are not working for the lords of England; we are not working for the capitalists of New England, and while we may invite a man to come in here and drop a hundred thousand dollars of his money in the development of our resources, if he happens to prove unfortunate in his investment we cannot help that; but we want to be just. We can say to him, "Here you have gone in here and you have put your money in, and you are out of luck; if you are so short that you can not get out of town we will lend you enough to see you home. (Laughter) But we want to be just with these people, and we do not want to hedge around the development of our resources by any such strict rules of conduct either moral or business. We want their money to develop the country; we want their energy, and we want their enterprise. Last Saturday I was at the Anaconda, a place that I never visited before, where I saw more machinery driven by power that was invented and called into requisition by man—saw those mountains bored, those wonderful structures put up, and a vast development of wealth there, and all by capital brought into this country; and I came to the conclusion that a man that obstructed its introduction into this country was, to say the least, benighted. I hope this amendment will not prevail.

Mr. Robinson of Deer Lodge: Mr. Chairman, this question as to the consideration of corporations and the interests of the territory is something that I have given no little consideration to. I believe, as a lawyer, that as affecting the interests of corporations and affecting the business community of Montana, that I have some knowledge of the proposition. I do not entirely agree with the gentlemen on either side of this proposition to the full extent that they have gone In the first place, I would be the last one, living in a mining county as I do, especially where the aid of corporations must be invoked and where the concentration of capital is necessary to develop the very resources of the country where I live; where it is necessary to my own interests—I would be the last one to thwart or interfere with that directly or indirectly or to prevent the concentration of capital for the purposes of carrying on these enterprises. On the other hand, sir, I have been trained in a school to believe that every man who has contracted a debt to the extent of his means, should pay that debt. I would hold out no false lights for people to run after; I do not believe in deceiving the innocent public. I believe in a square, fair transaction in all these matters and let the result of it be what it may. I believe that it is the better policy always to deal fairly and squarely with the public. Now, to invoke that principle as applicable to these corporations, it occurs to me in this way. I would not be unmerciful to corporations if it were not carried to the extent that the gentleman himself contemplates. I believe that would be going too far. I believe, on the other hand, if we leave it just exactly where our statutes leaves it at the present time, that it is not going far enough to protect innocent parties who deal with corporations. We have, sir, on our statute books a law that reads fair on its face and it goes far beyond what the President of this Convention would suggest should be the created law; it goes too far in one respect, and not far enough in another. I will read the section. Section 457 of our act with regard to this character of corporations provides as follows: "That the stockholders of every company incorporated under the provisions of this chapter shall be severally and individually liable to the creditors of the company in which they are stockholders to the amount of the unpaid stock held by them respectively, for all acts and contracts made by such company until the whole amount of the capital stock subscribed for shall have been paid in." That, sir, reads very fair upon its face and goes to a very great extent in protecting parties dealing with corporations The difficulty with this section is simply this In another section of the statute it stands in this way, that where two, three or more men who are worth two or three millions of dollars, each may incorporate a company and fix its capital stock at a million and a half dollars. In the first place the public in dealing with corporations, do not look to the responsibility of the artificial persons at all; few of them are well enough versed in law; the laborers and the mechanics and merchants are not well enough versed in law to know that the corporation is only bound to a limited extent, but that as they extend credit they do it more on the financial responsibility of the men who are conducting that corporation—the proprietors themselves. They believe they are responsible in every way, shape or fashion, and they deal with that corporation as if dealing with individual men and believe they are amply protected until the corporate property proves a failure. They go to these corporations to collect their bills; it is a failure and they are advised of the fact that the corporate property is of no value, and that there is no individual responsibility, notwithstanding the provision of this section of the statute, for the reason that they have, in taking half a million of the capital stock of the corporation, turned into that corporation wild-cat property that has proved after the expenditure of $1,000, $20,000 or $50,000—after spending that amount of money on the corporate property—it has proved an utter failure and worthless and they say our creditors can take the corporate property on which we have expended our money and which we have turned in in payment of the million and a half dollars that we have subscribed to the capital stock of that company. That renders this section or statute entirely nugatory and of no effect whatever. In that way they hold out a false light to laboring men, mechanics and business men to extend credit to them upon the faith in the character of the men who conduct the corporations. Now, if those men are honorable men and want to do what is right, they will, in dealing fair and square with the public, one of two things. They will say, or should at least say, that those innocent parties should be protected or that the law should be as contemplated by this amendment that I offer, that they should only exonerate themselves from this liability upon payment into the treasury of that company the par value of the stock for which they have subscribed, that is, the owner of a particular share of stock that represents one or ten dollars of the capital stock of that company should pay in the par value of that stock if they desire to entirely exonerate themselves from any claim that the creditors of the company may have against them. But, as the law now stands, if they can get around this section of the statute, as I said before, by putting in payment $1,500,000 of land that is worth only $150,000, they will do it. These men are irresponsible; they are adventurers; but they are not such business men as many of our business men in Montana. I can call to mind not far back when mining adventurers were not as successful as they are now. I remember in one of our great mining towns where business men and laboring men were short from seventy-five to one hundred thousand dollars in labor and material, all put into those mines; they proved a failure. I know that, sir, by being called upon by those claimants as their attorney to make a demand to collect those funds, but I was thwarted upon the very threshhold by that section. Now, that is not honest; that is not right between man and man. Many of our men who are operating mines today would not do such a thing as that, but men who come into the country—adventurers—they have done just such things as I speak of; they are liable at any time to do it again. I know of instances in Montana where that is being done. Now, then, perhaps to go to the extent of the amendment offered by the gentleman from Lewis & Clarke contemplates would be going too far. That is, it contemplates that, under certain circumstances, the stockholders in a corporation should be liable for the corporate debts, even if they had paid in the par value of the stock as contemplated in this section here. That is going too far, and to obviate that I offer the amendment that I do, "Unless he shall have paid in the par value of the stock that he holds." My amendment goes a little further than that and seeks to put it on an honest basis of actual cash or property, at its actual cash value. Now, then, my idea about this thing is to protect all parties, to do that it will not thwart or interfere with the organization of legal corporations at all. It will say to men who desire to go into those corporations and carry out those enterprises that you, in common with everybody else in Montana, should expect to pay your debts. We do not desire men to undertake enterprises here who will represent themselves as being worth a million and a half dollars and who may contract a debt of $50,000 with the working elements or the mechanics and business men of Montana and shall not be liable for it. Now, with all deference, I do not believe that is a fair deal. This principle, as may be claimed by gentlemen who control the books—there are articles of incorporation filed now in Montana in the Clerk's Office and others with the Secretary of State—that men contracting with such corporations can go and look at those articles of incorporation—they can go and look at the bylaws of the company, they can look at the statutes of Montana, they can look at the deeds that are on file—on record—of the corporations and see to what extent the capital stock has been paid up and if they do not desire to do a day's labor for that corporation, why, that is their own business. That is one aspect of the case and as a matter of practical application, men that deal with corporations do not go and look at all those things. As I said before, they rely on the responsibility of the men who manage them. Then, unless they go and examine and see what kind of property the corporation has and how much of their capital stock they have paid up, it is holding out a false light to the business world; it is a place where this false light can be held to men, when they expect one thing, there is covertly another staring them in the face, because the men who incorporated the companies are not honorable men and do not want to do what is right. That is what I object to, and that is prevented by the amendment to the amendment of the gentleman from Lewis and Clarke—and to carry out the provisions of this section of the statute which I have read. It seems to me it would be a fair deal all around to carry out this provision of the statute in good faith and not allow a provision created in our legislation, by which this can be rendered nugatory by allowing incorporated properties to transfer a mine or other property worth $25,000 in payment of hundreds of thousands of dollars.

I do not think that is fair or right and I think that this amendment with the amendment that I offer to it would be carrying out the principle laid down here by this statute which has been recognized and which mining men do not object to Suppose we would incorporate a water company. We want to dig a ditch that costs $50,000. We incorporated our company and put the capital stock at half a million dollars; we will deed to that corporation that water right, or a few rods of ditch that may have been loaned we will deed them in full payment of our capital stock of half a million dollars and go on then with our work and contract a ditch at an expense of $100,000, and you have got that ditch done—taking the chances—that ditch will prove a failure, suppose we are all right men who have inaugurated this scheme. Men who are today working on that ditch do not know the intricacy of the law—how easily they may be thwarted, they come to us and say we are not responsible to you, you have worked on the strength of the value of that ditch alone, and one man may say I do not propose to pay a dollar for the debt to the men, although I have subscribed over one hundred thousand dollars to the capital stock and I have an interest in the water right and I am protected I say, then, that that holds out a false light to the business community and to the world and it is not fair and just and I do not believe that men who seek to invest money with us and carry out those mining operations in good faith—I do not believe that they would expect, and it would be unreasonable for them to expect us to legislate in such a way that they could not be required in a reasonable manner to pay their debts.

Mr. J. K. Toole of Lewis & Clarke I think, Mr. Chairman, that I will go as far as any gentleman to advance the material interests of this new state and perhaps will do as little to stifle any enterprise as any gentleman here; but I fail to discover, sir, why it is that a mere transformation of a business transaction from that of an individual enterprise to a corporate enterprise should change the morale or integrity of the transaction. If an individual has escaped the obligation of liability, the laws of this country hold him for the payment of it, if it is a loan upon my property, my property is first subject to the payment of it and a judgment from the courts is the remedy for the deficiency. I simply ask by this amendment to put an incorporated company into the shoes of an individual so far as its liability is concerned and not even to that extent, limiting it to the amount of the indebtedness created at the time of the holding of his stock. Now, sir, there must be some reciprocity in regard to these transactions. Organizations must not be allowed to be understood to be for the sole purpose of promoting the interest of the corporations. There must be some reciprocity by which the interests of the public may be protected. If money is loaned by the individual, he has recourse to the public law courts —to the records of deeds, where they are spread upon the open books. It is the history of the property of the person and his liability may be ascertained by consulting the records of the district court. Now, how is it sir, with regard to the transactions of a corporation? The books of the company are open to nobody but the stockholders and creditors of the concern. The individual who transacts business with a corporation is in entire ignorance of its status, and, as suggested by the gentleman from Deer Lodge (Mr. Robinson) he relies upon the character and integrity of the promoters of the concern and it is upon both the faith and credit given to those gentlemen more than to the corporation that he is induced to loan his money or perform his services. Now, I do not conceive that it is necessary for the interests and property of this country that everything from the crop to the mining concern shall be incorporated I do not believe it is necessary in order to sell a mine—whether it be one of moderate value or of the highest value—that it shall be necessary to incorporate it in order to induce foreign capital to come into this country. I have done as much as I could, ont only upon this floor but elsewhere to secure such legislation as would be an invitation to foreign capital to invest its money in this country The proposition which puts a corporation upon the same footing as an individual does not take from them, in my humble judgment, the invitation which has been extended in that regard, and they can come here if they want to buy mining properties and examine into the title of the concerns. If my friend from Silver Bow, Mr. Clark, has a mine which he wishes to sell to foreign capital, and they are unwilling to take the stock with any embargo which may be upon it by reason of any indebtedness of which they know nothing, let Mr. Clark and his incorporators reorganize, settle up the debts of the concern, and transfer to the new corporation the property which is represented by the stock. It seems to me that no incorporated company has the right to demand or ask anything over or above the individual of the community. I think the suggestion made by the gentleman from Deer Lodge (Mr. Robinson), as embodied in his amendment, would perhaps subserve all the purposes contemplated; in other words if an incorporated company has a business—a grocery business or a mine—worth $100,000 and they are inclined to incorporate it and stock it for $500,000, let the amount of money which the stockholder puts into it represent the amount of the capital stock; that is to say, if it is five dollars a share, let him put up the par value of the stock, so that the amount in the treasury may represent exactly what the stock is declared to be; and in that way there is no advantage taken of the public. The public has a right to know something of the affairs of the concern with which they deal. I have no hostility to any particular corporation or to corporations in general; I have no hostility to the system when it is confined within due bounds, but under a law which authorizes anything and everything to be made the subject of an incorporation it seems to me that the public has some interests and some rights which ought to be guarded and protected, and I think that the proposition submitted by the gentleman from Deer Lodge (Mr. Robinson) is a very modest departure in that direction.

Mr. Knowles of Silver Bow: The distinguished gentleman who has introduced this proposition informs us that he got it from the constitution of California.

Mr. J. K. Toole of Lewis & Clarke: No, from the laws of California.

Mr. Knowles of Silver Bow: That proposition introduced into the laws of California drove from that state almost every mining corporation that existed there, no matter what kind of corporation, a wild-cat corporation or a corporation that had a good and substantial basis. The gentlemen say that men who deal with these corporations deal with them upon the faith of those who manage them. I deny that. Men who deal with these corporations deal with them from what they know of their condition, the value of their property, what incumbrances is upon that property. Mr. Robinson has spoken of mining transactions that occurred in this county some years ago that were unfortunate and how the people of that section of country were wronged. I happen to know something of some of these corporations. One of them, I think, was organized under the corporate laws of the State of Pennsylvania, and when we had procured judgment against the company for some $40,000, and thought under the laws of Pennsylvania we might collect it of some of the officers of the company, Mr. Napton, now deceased, went to Philadelphia and he found that the stock of the company was in the hands of dummies, except a small amount, enough to make certain responsible gentlemen directors—men that you could not collect five cents from. The stock had all been transferred to them a year or two before. There is no trouble in getting around these matters. The gentleman says to put in the corporate property for its cash value. I know mining corporations are organized in the Territory and they announce the capital stock as four or five millions of dollars. Some of the corporations perhaps are organized in such a way as to make the stockholders liable, just as Mr. Robinson wishes; others are perhaps organized properly; but if with such a provision in our constitution as this it is no trouble to organize corporations and deed to them the property in any amount of value—$250—that will not affect the sale of the stock. The stock in mining corporations will always sell in accordance with what appears to be the value of that property. Why, over here in his town they have organized a lot of mining corporations there, all of which I think are claimed to have from four to five millions of dollars of capital stock, and the stock has been selling for 10, 15, 20, and none of it higher than 55 cents, par value, of the shares of stock. Now, I undertake to say that those mining operations that have developed those mines in that section of country, or that have developed them in other sections of country, would not have been entered into by the people of this section of country if they had known that they were making themselves liable for all of the debts of these mining companies. They would not have gone into those corporations and contributed, some $50, some $100, some $500, and some $1,000, if they had expected for one moment that they were to be liable. If that is the case, what is the result? Why, in organizing corporations such as these gentlemen wish here you will retard the development of the country.

Most of these corporations for developing mines are formed right here with us, and as has been said, for a number of years there have been no instances known where the people have been swindled by these corporations. Gentlemen have trusted these corporations, not upon the faith of those who manage them, but upon the faith of how they have been organized, and they have trusted them only in accordance with their faith in trusting individuals having so much property. And I am sure that there is no advantage being taken of the public, as has been suggested in this matter. Can a gentleman cite where the public has been taken advantage of by any of these corporations for the last ten years? I know of none myself—none whatever. Men have dealt with them as they would with individuals. I know there are a great many men that will go to work for a corporation knowing just the whole condition of that corporation—knowing how much property they have—and if the corporation fails then they turn around and wish to get their pay from some individual connected with the corporation. Now this proposition that the gentleman has presented here is an old proposition. The legislatures were generally hostile to corporations fifty years ago, and they used to make some such provision as this as to the personal liability of individuals. You find that even now in the National Bankin Act, where they have made them liable for the same amount as their stock. But the great mass of the corporations in this country that are incorporated for mining purposes and such purposes as are kindred to them, do not make their stockholders liable for the debts of the corporation. It is well known that men would not go into these corporations, they would not put up their money upon those conditions. It is generally easy enough to find out how much money is put up for a corporation, how much is subscribed, how much is really the capital stock. Gentlemen say that they keep their books so that no one can tell. If any corporation keeps the books so that no one can tell whether it is solvent or not, does that take advantage of them? People are not forced to deal with corporations. The truth is that this country is prospering in its mining enterprises by reason of its corporations, and for the reason that these people were not liable for their corporation stock. Anyone can go and examine their books, and everything that is reasonable, I think, in these matters has been done by our law. Take up the proposition as Mr Robinson says Why, if he inaugurates that system, all that is necessary to do is to say that the capital stock of your mining enterprise is $250,000. Then the stock will sell for just exactly what it is worth You can put it at one cent a share, but it will go back to the question of what will that amount pay in dividends and if it will pay something in dividends it will go up to one dollar a share. There is no trouble in getting around the proposition that the gentleman has stated at all, and there is no use of putting that into our constitution. Shut out legislation or any encroachment that can be made upon this subject of mines or kindred enterprises, smelting enterprises, or such other enterprises, by legislatures in the future. You have fixed it up here in a cast-iron form of constitution, so that it can only be amended after action by the legislature and by vote of the people, and I think that we can fix our constitution so that this matter can be wholly relegated to the legislature. Let the legislature act upon it. There is no neceessity for prescribing all such matters as this in a constitution, and except in California I do not know of a single state in this Union that has put such a provision in its constitution.

Mr. Breen of Jefferson: About two weeks ago I received a letter from one of the brightest men in the Territory of Montana today; it was closely written and contained ten pages and it related to the very subject we are discussing now. I had an amendment something similar to the one presented by Mr. Toole waiting for the time to offer it, and I am very glad that a man of his ability and standing made the amendment instead of my being compelled to make it, and I hope it will prevail. Now, in regard to these corporations, when it comes to a question of corporations and the mechanics, laborers and business men of the territory, I think it is to the interest of the people of Montana that it shall be the corporations that will suffer. We can go to the town of the gentlemen that oppose this amendment—to the town of Butte—and we have an example of it there. I imagine everyone remembers the Bell Concentrating and Reduction Company. I worked for that company and wanted to get my pay but could not. I went to consult lawyers and I found that I could do nothing. I tried to attach the property. I was working for the Bell Concentrating & Reduction Company. Mr. King was superintendent of the company, and Mr. Wallace and Mr. King were the Bell Concentrating & Reduction Company, but I found out that the Bell Concentrating & Reduction Company were not Mr. Wallace and Mr. King. I tried to attach the charcoal and the engine and everything, and when I got to the horse and buggy I found that the horse and buggy was a present from Mr. Wallace to Mr King and was in no way connected with the Bell Concentrating & Reduction Company. If we are to protect such men as Wallace and King, or any other men, I don't care who they are, with such principles as that, and let the laborers and miners and mechanics and business men of the territory suffer, I say we had better not have such corporations, and I hope the amendment will prevail. Is not Silver Bow County better off today since the Bell smelter shut down? Over here in the Cataract district we have a St. Louis company operating there. If they strike it rich they will pay their men and if not they won't pay them. The workmen don't know any better, but so long as it is a corporation and has a superintendent they will go there and they will work for them. We don't want any such corporations. We will take legitimate chances and every man be liable for his just debts, and I hope Mr. Toole's amendment will prevail.

Mr. Knowles of Silver Bow: The citizens of Butte put up over $150,000 for the laborers that worked upon the Bell Company property—men that put it up and bought stock in that company, and they never got any return back. There is a gentleman within the sound of my voice now that put up $50,000 that those laborers got, and he has never got a dollar of it back.

Mr. Breen of Jefferson: I did not say that there were men who were officers in these companies who were good men, and for such men as that there is no need to offer this amendment—men that are going to stay within their means and not go off on wild-cat speculations and realize, or attempt to realize a million dollars out of a possible thousand, and if they don't make it to fleece the laborer and everybody else to the extent of $100,000. It is such men as that class that are the ones that this amendment is intended to cover and not the honest, legitimate business men of Montana.

Mr. Rickards of Silver Bow: All of this debate would be very entertaining and instructive if we were a legislative assembly, but I quite agree with the remarks of my colleague, Judge Knowles, when he says that this is a matter that ought to have been left to the legislative assembly. It may seem presumptuous for me to stand on my feet and raise the question as to what is fundamental law; nevertheless I do say that in my judgment there is a great deal in this proposition that has not any place in the constitution of the state; and I want to expreess my disappointment that there is so much here that is unnecessary, for I have looked over the statutes of our territory as they are now in operation and I find a great deal in the statutes now that is incorporated in this constitution. Now, I do not see the need of this. A gentleman said to me in the city of Butte the other day, "Mr. Rickards, I predict that the majority of the members of that constitutional convention will regret the day that they were ever elected to that convention." There is abroad in this territory a feeling that you are doing and attempting too much in the way of legislation The only objection that we had to the old constitution was that there was so much legislation in it; and I regret to see, and I want to raise my voice at this time against so much effort, so much attempt—so much futile attempt to incorporate in our constitution what ought to be left to our legislative assembly. I am not attempting to discuss the merits or demerits of this case. I confess to you that I do not feel competent to; and I do not impeach the confidence of this body when I say that I feel that we are wasting time in attempting to discuss the merits or demerits of this proposition If this were a legislative assembly I would sit here and listen wtih patience to all this debate; but I do say with a great deal of feeling, and I believe I voice my constituency when I say that we are attempting to do too much in the way of legislation in this constitution. I am astonished that there should be an attempt made to engraft in our constitution so much of the statute as it is now on this statute book.

The Chair put the question on the said amendment of the gentleman from Lewis & Clarke, and a vote being taken the same was declared lost.

The Chairman: The question is now on the amendment offered by the gentleman from Lewis & Clarke (Mr. Toole).

The Chair put the question on the said amendment of the gentleman from Lewis & Clarke, and a vote being taken, the same was declared lost.

The Clerk read Section 11 as follows: No foreign corporation shall do any business in this state without having one or more places of business and an authorized agent or agents in the same, upon whom process may be served; and no company or corporation formed under the laws of any other country, state or territory shall have or be allowed to exercise or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of this state.

There being no amendment to Section 11, the Clerk read Section 12, as follows: Section 12. No street or other railroad shall be constructed within any city or town without the consent of the legal authorities having cntrol of the street or highway proposed to be occupied by such street or other railroad.

Mr. Goddard of Yellowstone: I move to strike out Section 12.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Yellowstone, and a division being called for, the same was declared lost by a vote of 20 to 16.

The Clerk read Section 13 as follows. Section 13. The legislative assembly shall pass no law for the benefit of a railroad or other corporation or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already passed

There being no amendment to section 13, the Clerk read Section 14 as follows. Section 14. Any association or corporation or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this state, and connect the same with other lines, and the legislative assembly shall by general law of uniform operation provide reasonable regulations to give full effect to this section No telegraph or telephone company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning or having control of a competing line, or acquire by purchse or otherwise any other competing line of telegraph or telephone

Mr. Clark of Silver Bow moved to strike out Section 14.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared lost

The Clerk read Section 15 as follows. Section 15: If any railroad, telegraph, telephone, express or other corporation, organized under any of the laws of this state shall consolidate by sale or otherwise with any railroad, telegraph, telephone, express or other corporation organized under any of the laws of any other state or territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state, in all matters that may arise, as if said consolidation had not taken place.

There being no amendment to Section 15, the Clerk read Section 16, as follows: Section 16 It shall be unlawful for any person, company or corporation to require of its servants or employes, as a condition of their employment or otherwise, any contract or agreement whereby such person, company or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employes while in the service of such person, company or corporation by reason of the negligence of such person, company or corporation or the agents or employes thereof; and such contracts shall be absolutely null and void.

Mr. J. K. Toole of Lewis & Clarke: I wish to recur to Section 15. In Section 15 the word "company" is omitted on line one, after the word "corporation." I move to insert the word "company."

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

There being no further amendments to Sections 15 or 16, the Clerk read Section 17, as follows: Section 17. The legislative assembly shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise or any of its privileges.

There being no amendment to Section 17, the Clerk read Section 18, as follows: Section 18. The term "corporation" as used in this article shall be held and construed to include all associations and joint stock companies having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law.

There being no amendment to Section 18, the Clerk read Section 19, as follows: Section 19. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him.

Mr. Fields of Park: I offer the following substitute for Section 19:

The Clerk read as follows: Substituute for Section 19. Dues from private corporations shall be secured by such means as may be prescribed by law, and the stockholders of such corporation shall be jointly and severally individually liable for all debts that may be due and owing to all their laborers, servants, employes and apprentices for services performed for such corporations.

Mr. Fields of Park: I move the adoption of the substitute.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared lost.

Mr. Breen of Jefferson: I move to strike out all after the word "law" in the second line.

The motion was seconded.

The Chairman stated the motion.

Mr. Fields of Park: I believe in starting right in and supporting it from the start I do not think it is any greater crime for a man that is hungry to use Victor Hugo's illustration, walking down the street, to steal a loaf of bread from a baker's shop and be condemned for it than it is to be employed for companies and corporations and make them work for a certain time and then throw up and dissolve the company and declare there is nothing to pay for what work has been done. I contend that there are gentlemen here who understand perfectly well what the aim and object of this amendment is and also the one that the gentleman from Lewis & Clarke offered a little while ago for Section 10, and I know it is a hopeless task, but still I am willing and ready to put myself on record to see that we enact laws here that shall show equality and justice to all, and I propose to put myself on record in saying that working men shall have their pay for the work they do for any corporation whatever. If my wife goes down to the city and buys a dollar's worth of sugar I am held responsible for it, and I contend that when I join a company or corporation and invest my money here that I should be held equally responsible for the same and every cent of the property that I own for labor that is honestly done and should be honestly paid for.

Mr. Burleigh of Custer: I agree with the gentleman in some things. I think that a man who goes down the street and robs his neighbor of a loaf of bread should be punished for petty larceny; so I think if any man goes into a corporation and robs his neighbor he should be punished for the offense under the law, and that is just what this section provides in the amendment to strike out. "Dues from private corporations shall be secured by such means as may be prescribed by law." There is a motion to strike out the residue—"but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him." Now, if the corporation is able to pay, make them pay, and if they can't then punish them under the criminal law. The old saying is: "All that you can get of a cat is the skin."

The Chair put the question on the motion of the gentleman from Jefferson (Mr. Breen), and a vote being taken, the same was declared carried.

There being no further amendments to Section 19, the Clerk read Section 20, as follows: Section 20. That no incorporation, stock company, person or association of persons in the State of Montana shall directly or indirectly combine, or form what is known as a trust, or make any contract with any person or persons, corporation or stock company, foreign or domestic, through their stockholders, trustees, or in any manner whatever for the purpose of fixing the price or regulating the production of any article of commerce or of the product of the soil, for consumption by the people. That the legislature shall pass laws for the enforcement thereof by adequate penalties to the extent, if necessary for that purpose, of the forfeiture of their property and franchises, or in case of foreign corporations, prohibiting them from carrying on business in this state.

Mr. Rickards of Silver Bow: I move to strike out Section 4.

The motion was seconded.

The Chair stated the motion

Mr. Rickards of Silver Bow: Now, Mr. Chairman, I said a few moments ago, I believe, that there has been incorporated in Proposition 31 a great deal that is already on our statute books, and I reaffirm what I said a few moments ago. This is one of the sections containing what I already find on page 726 of our statute book, which I wish to read. "At such election for trustees each stockholder shall have as many votes as the number of shares of stock held by him multiplied by the number of trustees to be chosen, and may cast all his votes for one candidate, or distribute them as he may see fit, and the persons having the greatest number of votes shall be trustees." Now, Mr. Chairman, I am opposed to incorporating in our constitution an irrevocable method by which an election shall be held While our statutes have provided for an election in this manner, the experience of a few years may demonstrate that there is a better or more approved method, and I do not believe it is wise to adopt irrevocably such a method. Hence my motion.

Mr. Fields, of Park: I hope this motion will prevail I know at the present time of several different bodies that are on the verge of incorporation that are delayed for the simple reason that we have a law on our statute books which they would like, and I believe will at the coming Legislature, have changed, and if this is put in the constitution it will be impossible without a constitutional amendment. Everybody in the Territory of Montana today who wishes to incorporate in business, so far as my observation goes, wishes to go in under the head of a law that has been passed in Minnesota wherein it is made optional in taking out incorporation papers to vote the shareholders or the shares. At the present time, I know of one instance in the Territory of Montana It has been running a year and a half, and it has proved a success, and I think where bodies of men form a company or corporation together and they come to an agreement that they will not vote the shares but vote the shareholders, that there should be no law prohibiting them from so doing; and I hope that this motion made by the gentleman from Silver Bow will prevail, thereby not binding those people who are looking forward for a change in that law at the meeting of our next Legislature

Mr. Clark, of Silver Bow. I do not wish to interfere in any way with the proposition of the gentleman from Park. I would simply say this, that the method here provided for by the Legislature of Montana, as cited by my colleague, Mr. Rickards, is one that allows this optional method of voting, and that may be repealed. Now, in the State of New York—for I happen to be interested there and know how matters are conducted there—those holding a majority of the stock of any corporation or company organized under the laws of the State of New York have the absolute control of the Board of Directors and elect every one of them; the minority can get no representation whatever; but by the rule now adopted by the Legislature of Montana, and which is incorporated in the section of this article here, no manner of shutting out the minority representation upon any board of trustees exists. I believe in a minority representation.

Mr. Rickards, of Silver Bow: I wish to say that I believe in the minority always having a voice in the management of its own affairs; nevertheless, I repeat as I said before, that I do not deem it wise in making fundamental law to fix irrevocably a method by which stockholders shall be elected It is already on our statute books, and I think the Legislative Assembly is as competent to deal with that statute as we are, and I am not sure but that in the light of future developments they may be more competent.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Rickards, and the same was declared lost.

Mr. Hershfield, of Lewis & Clarke: There is a little change there that I want to make. I send the motion to the Chair.

The Chairman: The gentleman from Lewis & Clarke, Mr. Hershfield, moves to strike out in line four the word "managers" and insert "trustees" —line four of section four.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

Mr. Marshall, of Missoula: I move to amend Section 3 by inserting after the word "constitution" in the third line these words: "or which may be hereafter incorporated."

The motion was seconded.

The Chair put the question on the said motion and a vote being taken the same was declared carried.

Mr. Burleigh, of Custer: I move that the committee do now rise and report, with the recommendation that Proposition No. 31 be adopted as amended.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

Mr. Carpenter, of Lewis & Clarke: Mr. President, the Committee of the Whole have had under consideration Proposition No. 31 and have made some amendments thereto which are as follows: They have amended Section 6 in the manner herein recorded in writing, as follows: Add to Section 6 as follows: "Nor shall any officer of such railroad, express or other transportation company act as an officer of any other railroad, express or other transportation company owning or having control of a parallel or competing line". Section 15 has been amended by adding the words "or company" after the word "corporation". Section 19 has been amended by striking out all after the word "law" in line two. Section 3 has been amended by inserting after the word "constitution" in the second line the words "or which may be hereafter incorporated." Section 4 is amended by striking out of line 4 the word "managers" and in the other places in the same section where the word occurs, and inserting in lieu thereof the word "trustees". The committee have directed their chairman to report back this article with the amendments stated and recommend that the amendments be adopted in convention.

Mr. Eaton, of Park: I move that the amendments specified be adopted

The motion was seconded.

The Chair put the question on the motion of the gentleman from Park, and a vote being had, the same was declared carried.

Mr. J. K. Toole, of Lewis & Clarke: Mr. President, I wish to offer the following amendments to the rules.

The President: The Chairman of the Committee on Rules offers the following amendments, which the Clerk will read.

The Clerk read as follows: Amendments to rules. 1st. It shall not be in order to call the roll but once a day, and then upon the assembling of the convention after an adjournment. 2nd. A call of the ayes and nays upon the final passage of any proposition intended to be embodied in the constitution shall not be necessary unless demanded by a member. 3rd An amendment offered to any proposition in Committee of the Whole may be again presented in convention, but no debate shall be in order thereon without unanimous consent.

Mr. Burleigh, of Custer: I would like to ask the gentleman one question, if the adoption of this rule as read here won't preclude the possibility of a call of the house.

Mr. J. K. Toole of Lewis & Clarke: It was designed so. I hope the matter will be postponed for further consideration until tomorrow morning.

Mr. Burleigh of Custer: I move that the convention do now take a recess until eight o'clock this evening

The motion was seconded.

The Chair put the question on the said motion and a vote being taken the same was declared carried.

The convention took a recess until 8 P. M.

Eight P. M The convention was called to order by the President.

The Clerk called the roll

The President· What is the pleasure of the convention?

Mr. Kennedy, of Missoula: The Committee of the Whole desire to report their action on Proposition No. 24, Article on Municipal Corporations and Officers.

The President· If there be no objection the report of the Committee of the Whole on Proposition No. 24 will be read by the Clerk.

The Clerk read as follows: Mr. President, your Committee of the Whole had under consideration Proposition No. 24, General File No. 24, Article on Municipal Corporations and Officers, and beg leave to report the same back to the convention, except such parts as have been referred, with the following amendments, which the committee recommend be adopted. Your committee would state that in the amendments offered reference is to numbers of lines and sections as such as are in the printed bill.

Strike out all of Section 2 after the word "years" on line four; also strike out all words after the word "vote" on line three up to and including the word "therefor" on line four, and insert in lieu thereof the words "at a general election on a proposition to remove the county seat, shall vote therefor" Strike out Section three Amend Section four by adding thereto the following: "Provided that nothing in this section shall prevent the readjustment of county lines between existing counties." Strike out Section five, Section six, Section seven and Section eight. Strike out Sections nine and ten and substitute in lieu thereof the following: "In each county there shall be elected three County Commissioners whose term of office shall be four years. A vacancy in the Board of County Commissioners shall be filled by appointment of the District Judge in which the vacancy occurs." Amend Section eleven by inserting after the word "taxes" on line three the words "Provided that the County Treasurer shall not hold his office for more than two consecutive terms" Also strike out the word "all" on line two. Strike out Section 12 Amend Section 13 by striking out the word "shall" in line one and insert in lieu thereof the word "may." Strike out Section 14.

Your committee would further recommend that the following be recommended to the Committee of the Whole to be considered with the article on ordinances· "All county officers in office at the time of the adoption of this constitution, except Probate Judge, shall hold their respective offices until the expiration of the term for which they were elected." Also that Resolution No 6, introduced by Goddard, of Yellowstone, be referred to the same committee. Your committee would further recommend that Resolution No. 18, introduced by Buford, and Resolution No 9, introduced by Kennedy, and extract of proposition introduced by Joy, and also Resolution No. 14 introduced by Conrad, do not pass.

(Signed) KENNEDY, Chairman.

Mr. Burleigh, of Custer: I move that Proposition No. 24 as amended and reported back by the committee be adopted as part of the constitution of the State of Montana.

The motion was seconded.

The President: The report of the committee should be disposed of.

Mr. Middleton, of Custer. I move you as an amendment that the report of the Committee of the Whole be amended by reinstating Sections seven and eight as in the printed copy.

The President The Chair would state to the gentleman from Custer that the first thing to do is to dispose of the report of the committee.

Mr Middleton, of Custer· My idea was to amend the report of the committee by reinstating those two sections

The President: The report should be received first. If there be no objection the report will be received and will be now open for amendment.

The amendments offered by the Committee of the Whole must first be considered, and then any other amendments that may be proposed.

The Clerk read as follows: Strike out all of Section 2 after the word "years" on line four; also strike out all words after the word "vote" on line three up to and including the word "therefor" on line four and insert in lieu thereof the words "at a general election on a proposition to remove the county seat, shall vote therefor."

Mr. Fields, of Park: I move the adoption of the amendment.

The motion was seconded.

The Chair put the motion, and the same was declared carried.

The Clerk read as follows: Strike out Section 3.

Mr. Witter, of Beaverhead: I move the adoption of the amendment.

The motion was seconded.

The Chair put the motion and the same was declared carried.

The Clerk read as follows: Amend Section four by adding thereto the following: "Provided that nothing in this section shall prevent the readjustment of county lines between existing counties."

Mr. Middleton, of Custer: I move its adoption.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

The Clerk read as follows: Strike out Section 5.

Mr. Sargent, of Silver Bow: I move that the amendment be adopted.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken the same was declared carried.

The Clerk read as follows: Strike out Section 6.

Mr. Burleigh of Custer: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken the same was declared carried.

The Clerk read as follows: Strike out Sections seven and eight

Mr. Carpenter, of Lewis & Clarke: I move that the report be adopted as to Section 7.

The motion was seconded.

The Chair stated the motion.

Mr. Middleton of Custer: Mr. President, it seems to me that the constitution should provide in some way or other that the Legislature should have the power to divide counties up into townships, districts, precinct, etc. Now, a great many matters of legislation have so far crept into the constitution, but it seems on the other hand that there has been a disposition during the last day or two to strike out matters as being legislation that really should remain, and I really believe that if the same disposition had existed from the start that we would not have anything today but perhaps the preamble Now, Section seven provides that the Legislative Assembly shall provide by law for the subdivision of the several counties of the State. It occurs to me that it is proper there should be a provision of that kind in the constitution, and although some may say that it is legislation, and undoubtedly the Legislature would have the power to do that in the absence of constitutional provision, I think that it is wise that those matters be touched upon in some way, and that the report of the Committee of the Whole upon that proposition should not be adopted, and that Section seven of the printed bill should remain.

Mr. Burleigh, of Custer: There is nothing clearer under the sun than that the power to legislate in regard to matters not inhibited by this constitution exists with the people and their representatives in the Legislature. It is not necessary to interject anything of that kind into the constitution: they have the power now, and if there is nothing said about it they have unlimited power to divide the counties and their State into such districts as they see fit. It is true that if it is put in there it would not rob them of that power, but the power exists here to all intents and purposes in the people to make such internal arrangements as they see fit, provided they do not conflict with the constitution of the United States.

The President: The question is upon striking out Section 7.

The Chair put the said question, and a vote being taken, the same was declared carried.

The President: The question is now on the report of the committee to strike out Section 8.

Mr. Middleton, of Custer: Now, although it is true, as has been suggested divers and sundry times by my colleague from Custer, that unless these powers are inhibited they do remain in the Legislature and exist there, in Section eight there is a certain limitation as to the number of classes that cities and towns shall be divided into, and it occurs to me that the Legislature should be prohibited from providing more classes of cities and towns than is mentioned in this section. (Reading) "The number of such classes should not exceed .... The power of such classes should be limited by general law" Now, both of those paragraphs are limitations and are proper matters of fundamental law. I do not desire to take up the time of the convention, but it occurs to me that we have got to sweeping matters out too much, and that that section should remain.

Mr Luce, of Gallatin: I think there is somebody going to come after us in the legislative halls of the State of Montana—I hope so—and I would remind this convention that we have got along here pretty well since 1867 without this constitution, so far as the legislative power is concerned. The Organic Act provides, I think, that the legislative power should extend to all rights of suffrage and legislation not inconsistent with the constitution of the United States, and it does not seem to me that the Territory has gone wild over all that power in its hand. I think this is a matter that the Legislature may be safely intrusted with, and as has been said by my friend from Deer Lodge County, Mr. Whitehill, the Legislature will do this, or at least it has a perfect right to do it, and if it does not do it there is no power on earth to coerce them. It is unnecessary to have this thing in the constitution, and I think we had better leave something for the Legislature of the State of Montana to do hereafter. We might do things here in the shape of legislation that should be undone, and it is not so easy if you put it in the constitution to have it undone. Whatever one Legislature may do, why, a subsequent Legislature can amend or repeal. I think the Committee of the Whole did right in striking this out, and I hope their action will be sustained

The President: The question is upon the report of the Committee of the Whole striking out Section eight.

The Chair put the said question, and a vote being taken, the same was declared carried.

The Clerk read as follows: Strike out Sections 9 and 10 and substitute in lieu thereof the following: "In each county there shall be elected three County Commissioners whose term of office shall be four years. A vacancy in the Board of County Commissioners shall be filled by appointment of the District Judge of the district in which the vacancy occurs."

The President: What is the pleasure of the convention?

Mr. Burleigh, of Custer: I move its adoption.

The motion was seconded

The Chair put the question on the said motion, and a vote being taken the same was declared carried.

The Clerk read as follows: Amend Section 11 by inserting after the word "taxes" on line three the words "provided that the County Treasurer shall not hold his office for more than two consecutive terms." Also strike out the words "of deeds" on line two.

The President: The convention will act upon the first amendment.

Mr. Middleton: I desire to offer an amendment to that, Mr. President.

The Clerk read the gentleman's amendment as follows: "Strike out the proposed amendment made by Committee of the Whole and insert in lieu thereof the following: Provided that no person shall hold the office of County Treasurer for more than two consecutive terms."

Mr. Middleton, of Custer: That leaves the substance of the amendment the same, but changes the wording of it. It should state "the amendment proposed by the Committee of the Whole after the word "taxes" on line three.

The President: The Clerk will read the amendment offered by the Committee of the Whole, and then the amendment offered by the gentleman from Custer.

The Clerk read as follows: Amend Section 11 by inserting after the word "taxes" on line three the words: Provided that the County Treasurer shall not hold his office for more than two consecutive terms. The amendment by Mr. Middleton reads as follows: "Provided that no person shall hold the office of County Treasurer for more than two consecutive terms."

The President: The question now is upon the amendment offered by the gentleman from Custer to the amendment offered by the Committee of the Whole.

Mr. Middleton, of Custer: It will be seen that the phraseology of the amendment of the Committee of the Whole is "that the County Treasurer shall not hold his office," and what is attempted to be arrived at is that no person shall hold the office of County Treasurer for more than two consecutive terms.

Mr. Kennedy of Missoula: I move the adoption of the amendment offered by the gentleman from Custer in lieu of the amendment of the committee of the whole.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The Clerk read as follows: Also strike out the words "of deeds" in line two of Section 11.

Mr. Witter of Beaverhead: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The Clerk read as follows: Strike out Section 12.

Mr. Buford of Madison: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion, and on a vote being taken, the same was declared carried.

The Clerk read as follows: Amend Section 13 by striking out the word "shall" in line one, and insert in lieu thereof the word "may."

Mr. Kennedy of Missoula: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The Clerk read as follows: Strike out Section 14.

Mr. Luce of Gallatin: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The President: Are there any further amendments to be offered to Proposition No. 24? If not the Chair will entertain a motion to place the proposition upon its final passage.

Mr. Hogan of Silver Bow: I move that proposition No. 24 be placed upon its final passage.

The motion was seconded.

The President: The Clerk calls the attention of the Chair to the fact that there were some resolutions considered in connection with this proposition that have not yet been considered by the convention. If the gentleman will withhold his motion for a few minutes, the convention can act upon these matters.

Mr. Hogan of Silver Bow: I withdraw my motion, with the consent of my second.

The President: The Clerk will read the resolutions to be considered.

The Clerk read as follows: "Your committee would recommend that the following be recommended to the committee of the whole to be considered with the article on Ordinances: All county officers in office at the time of the adoption of this constitution except Probate Judges, shall hold their respective offices until the expiration of the terms for which they were elected. Also that resolution No. 6, introduced by Goddard of Yellowstone, be referred to the same committee."

Mr. Burleigh of Custer: I move the adoption of the amendment, or rather the resolution.

The motion was seconded.

The Chair stated the question.

Mr. Witter of Beaverhead: I would ask if this amendment would carry that whole section with it?

The President: What section does the gentleman refer to?

Mr. Witter of Beaverhead: Section 11.

The President: No, it will not carry the section with it, simply the amendment offered to be considered in committee of the whole in connection with the ordinances.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The Clerk read as follows: Your committee would further recommend that Resolution No 18, introduced by Buford, and Resolution No. 9, introduced by Kennedy, and extract of Proposition No. 7, introduced by Joy; also Resolution No. 14, introduced by Conrad, do not pass.

Mr. Middleton of Custer: I move the adoption of the report.

The motion was seconded

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The President. The question now is upon the final adoption of Proposition No. 24 as amended.

Mr. Hogan of Silver Bow· I renew my motion.

Mr. Witter of Beaverhead· I would ask what shape Section 11 is now in? Part of it has been referred or amended.

The President. That was considered not to be Germane to this section, and was referred.

Mr. Witter of Beaverhead: I have an amendment to Section 11.

The President· The gentleman from Beaverhead, Mr. Witter, offers to amend Section 11 by striking out all after the word "years" in line six to and including the figures "1892" in line seven.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Beaverhead, and a division being called for, the same was declared carried by a vote of 33 in the affirmative to 30 in the negative

The President: The question now before the convention is upon the final adoption of Proposition No. 24. The ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows: Ayes· Aiken, Breen, Bullard, Burleigh, Burns, A. J., Callaway, Carpenter, Cauby, Chessman, Craven, Dyer, Gaylord, Gibson, Gillette, Goddard, Hammond, Hartman, Haskell, Hershfield, Hickman, Hobson, Kanouse, Kennedy, Knippenberg, Knowles, Kohrs, Loud, Luce, Maginnis, Marshall, Mitchell, Myers, Reek, Rotwitt, Rickards, Sargent, Schmidt, Warren, Watson, Whitehill, Witter.

Nays Bickford, Brown, Buford, Burns, A F., Burns, Edward; Cardwell, Collins, Conrad, Cooper, Courtney, Dixon, Fields, Graves, Hatch, Hogan, Joyes, Marion, Mayger, Middleton, Ramsdell, Robinson, Stapleton, Toole, Jos. K., Toole, J R, Winston, Mr. President.

Ayes, 41; Nays, 26.

Absent: Brazleton, Durfee, Eaton, Joy, McAdow, Muth, Parberry, Webster—8.

Mr Callaway of Madison I move you, sir, that the vote by which Proposition No. 24 was adopted be now reconsidered, and that motion laid on the table.

The motion was seconded

The Chair put the question on the said motion, and a division being called for, the same was declared carried by a vote of 33 in the affirmative to 32 in the negative

Mr. Rickards of Silver Bow· When we adjourned I believe we were considering the report of the committee of the whole on Proposition No. 31 with the amendments, were we not?

The President The committee of the whole, I believe, did report upon that verbally, but the chairman of the committee desired further time in which to file his report

Mr. Rickards of Silver Bow· I move that the rules be suspended and Proposition No 31 placed upon its final passage.

The motion was seconded.

The President: The question now is upon the motion of the gentleman from Silver Bow, that the rules be suspended and Proposition No. 31 placed upon its final passage. The amendments of the committee of the whole will first be received. The Clerk will read the amendments reported by the committee of the whole.

The Clerk read as follows· Add to Section 6 as follows: "Nor shall any officer of such railroad, express or other transportation company act as an officer of any other railroad, express or other transportation company owning or having control of a parallel or competing line."

Mr. Courtney of Silver Bow: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The Clerk read as follows: Amend Section 15, line one, by adding the words "or company" after the word "corporation."

Mr. Fields of Park: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question of the said motion, and a vote being taken, the same was declared carried.

The Clerk read as follows: Strike out of Section 19 all after the word "law" in line two.

Mr. Burleigh of Custer: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried

The Clerk read as follows: Strike out of line "four" of Section 4 the word "managers" and insert the word "trustees."

The President: This occurs also in lines "two" and "seven." The question now is upon the amendment offered by the committee of the whole to substitute in lines 2, 4 and 7 the word "trustee" in lieu of the word "managers."

Mr. Rickards of Silver Bow: I move as an amendment to the amendment from the committee of the whole that Section 4 be stricken out entirely.

The motion was seconded.

The Chair put the question on the motion to amend by substituting "trustees" for "managers" and a vote being taken, the same was declared lost.

The President: The question now is upon the amendment offered by the gentleman from Silver Bow to strike out Section 4.

Mr. Rickards of Silver Bow: I wish to say for the benefit of the few who were not there this afternoon when we were considering this in the committee of the whole, my reasons for this motion. We find that there is already on the statute books practically and almost literally the same provision that was incorporated in Section 4, and I stated this afternoon, and I wish to state again, that I do not believe it wise for this constitutional convention to attempt to fix irrevocably the question of how directors or trustees of a corporation shall be elected. Our experience has taught us that there may be a better way of regulating this matter than that now on our statute books, and experience may prove the same thing with any other enactment we may make here on that matter. For that reason I think it wrong for us to attempt to fix in an ironclad manner how the trustees of corporations shall be elected. That is my reason for moving to strike out Section 4.

Mr. Stapleton of Silver Bow: I hope that Section 4 will not be stricken out. My colleague says that we have the same provision in the statute. That is true; but the committee thought it was so important a matter that, in order that there might never be any influence brought to bear on the legislature to have them change it, it was necessary to incorporate it into the constitution, in order that, as my friend Mr. Rickards says, it might be iron-clad and that it might not be liable or subject to change. Mr. President, it is the only means by which the minority can ever have a representation upon the board of any corporation, and by this means they always can have a representation. Now, until this law was passed there was no possible way for a minority or for a few men owning a small amount of stock to have a trustee of their own and to elect a trustee at a meeting, and now they can under this section of the law always have a representation—a minority representation it is true, but it does appear to me that this section is the poor man's friend—that it provides for minority representation, and I do not believe that any means can ever be devised that will be better than it. I would say, leave to the legislature, if it could devise a better means, but I believe that no better way can ever be devised, and that the legislature may depart from this and enact a much worse law. I believe it is to the interest of the people to retain this here as a limitation upon any enactment which the legislature might make; and it is not legislation pure and simple; it is a limitation upon the legislature. You cannot provide for it in any other way, and I believe when this convention thoroughly understands the matter they will see at once it is the only way a poor man can have a representation on the board of trustees of any corporation, and by retaining this for all time they will have that; and if you strike it out the legislature at the very first session may begin to experiment and so amend the law that there would be no minority representation on the board.

Mr. Hershfield of Lewis & Clarke: Did I understand the decision of the Chair correctly when he announced that the substitution of the word "trustees" for "managers" was lost.

The President: Yes, sir; the motion to amend was lost.

Mr. Fields of Park: I have listened with close attention to the remarks of my learned friend the member of Silver Bow county, in reference to this Section No. 4 being the poor man's friend. I have had a little experience in that myself, and I believe it is the poor man's enemy. The idea of giving the poor man a minority and telling him that that is giving him a representation. I say that minority is nothing to the poor or the rich man in this case. The way it is provided for in here is taking the law to the extreme and the utmost distance from the poor man or the workingman. I have heard my learned friends here say that a law on our statute books could be changed by another legislature, and I believe it can; I believe it can be changed easier than an amendment to the constitution can be made. I know of orders and societies which have for the past number of years been trying to become incorporated with the intention of voting the shareholder instead of the shares At the present time there is one company of that kind in the territory of Montana. It has never been brought to a test case, but the people who belong to that company are in fear at all times that it might be brought up by some person. Now, I know that these people are looking forward to the first legislature of the State of Montana to see the law repealed and without wishing to attribute any unworthy motives to the learned friends and members who are trying to advance this, and without at all wishing to accuse them unjustly, I honestly and candidly believe that they are making steps and strides to defeat that measure and place it farther from the reach of the people of Montana; and I stand here to see and do my utmost that that clause is stricken out of the constitution, and I hope to live to see the day it will be stricken from our statute books as it stands today.

Mr Whitehill of Deer Lodge: I am very much in favor of having this section retained, but it seems to me the way it is in here that the objection is, it will amount to nothing as it stands now, for it is simply a direction to the legislature that they shall make this law. Now, if we desire to retain it in here we can put this into the form of a statute itself, and then it is as binding as though the legislature had made it a statute; and for that reason I move to strike out the words up to the word "all." Then it will read: "All elections for directors, etc., "shall be:" Then it is in the form of a statute and is as binding, I believe, as though the legislature had passed it. If passed as it is now it will be a nullity The legislature need not pass any law unless it sees fit Now, I venture to say that a great many states have passed, by their legislatures, this provision. I say it is wise and right that a minority should have some chance of having a say there: It is little enough as it is now. Any one who has any dealing with a corporation and stands in with the minority knows that they have a small show to get any right they are entitled to. and I think it would be almost the unanimous sense of the people that they should be preserved; and although we may leave it out here and leave it to the legislature to pass it, still I think it is important that such a provision should be made, and for that reason I say let us put it in the form of a statute by striking out those first words.

The President: The Chair will put the motion. The motion to amend takes precedence of the motion to strike out. It is moved and seconded that Section 4 be amended by striking out the first nine words in line one—"The legislative assembly shall provide by law that in". This section will then begin: "All elections for directors and managers."

Mr. J. R. Toole of Deer Lodge: Mr. President, I had intended to say a few words in favor of striking out the section as it is printed here. It occurs to me that the proper thing to do would be to leave this to the legislature. As the gentleman from Park well says, there are some people in this territory, and a good many people in this territory, who desire to go into corporations where individuals instead of stock shall have the vote, and if the matter is left to the legislature, a bill can be drafted providing that the promoters of any scheme shall elect whether they hsall accept this provision or shall accept the other; and if we put this in the constitution we shall prohibit the owners of stock in building associations and other associations of that kind from providing in their by-laws of incorporation that individuals instead of stock shall have a vote; and by leaving this matter to the legislature a bill can be drafted that will meet the wants and requirements of both parties—people who desire a provision of this kind, and also those who desire the other provision. Those who desire to incorporate under the other provision will incorporate in the by-laws of the company the fact that individuals instead of stock shall be entitled to vote. If we incorporate that we will prohibit them from incorporating for the purpose of building associations and other incorporations of that character. It strikes me, in view of that fact, that the correct course to pursue would be to leave this out and let the legislature provide that the promoters of any of those schemes shall elect which course they desire to take in the incorporation. That will meet the wants of all people. It strikes me the correct way to do would be to strike out the section.

Mr. Rickards of Silver Bow: I would like to call the attention of the convention to the fact that if those words are stricken out it will not make sense.

The President: The Chair would suggest that the question now before the convention is not upon striking out the section, but upon the amendment of the gentleman from Deer Lodge.

Mr. Sargent of Silver Bow: I see no objection to the section as it stands, and I also see no use for it, for it provides precisely what the articles of incorporation of every incorporated company provides that I have known anything about. I have held a little stock in a number of companies, always in a large minority, and I never knew any incorporated company but what allowed the stockholders, no matter how little stock they held, to vote. If the stockholder has only one share he is permitted to vote, and that is all that this provides; so it furnishes, as it reads, no additional protection to any minority stockholder whatever, and it seems to me as it stands that it might be better left out.

Mr. Whitehill of Deer Lodge: If the gentleman will read the section carefully he will see that it does provide—(interrupted).

The President: The gentleman from Silver Bow has the floor.

Mr. Hogan of Silver Bow: Mr President, I am opposed to striking out any part of this section, but I certainly am in favor of striking out the whole section. All I have to say to the amendment is that I don't think it makes complete sense, and I don't think it is necessary.

Mr. Whitehill of Deer Lodge: If the gentleman will examine this carefully he will see that this does provide that a minority stockholder can cumulate his votes; for instance, there are five directors to be elected and he has ten shares; he would be entitled to vote for ten shares; the votes of ten shares would entitle him to vote for each one; but this provides that instead of voting for each one of the five he doubles up his right and he has fifty votes for any one man, and in that way he is able to elect some one man. He thus provides that where a minority desire to be represented there is no defeating them, because they would have five votes to one, and in that way it does provide so that a minority may have a say in electing one of the directors in a corporation.

Mr. Rickards of Silver Bow: I have endeavored to maintain a consistent course respecting superfluous legislation throughout our proceedings. My motion made in committee of the whole was made without consultation with any one except a learned gentleman on this floor as to whether the same provision was not already on the statute books, and he told me that it was, hence my motion. Now, the amendment before us to amend by striking out a part would leave it practically just where it was. Therefore I am opposed to the amendment and of course shall vote in favor of my original motion, that the section be stricken out. And I want to say, Mr. President, before I take my seat, and then I am done with the subject and shall vote in accordance with my views, that I believe that all that we give the minority stockholders by the adoption of this section they already have under the law as it now exists. What I am opposed to is any attempt on the part of this constitutional convention to make an iron-clad rule that after developments and experience may prove it most radically wrong. Now, I am not prepared to say at this time, and do not wish to be understood as saying, it is wrong now; but I do say that we are learning all the time and profiting by experience, and later experience may prove that there is a better way than the way suggested by this section; therefore my motion, and I do hope it will prevail.

Mr. Collins of Cascade: I call the attention of the gentleman to the fact that he has stricken out one word too many. The sentence should begin "In all elections."

Mr. Whitehill of Deer Lodge: I accept that amendment.

The President: The question is on the amendment of the gentleman from Deer Lodge to strike out the first eight words in line one.

The Chair put the question, and the vote being taken, the same was declared lost.

The President. The question is now upon the motion of the gentleman to strike out the section.

Mr. Hershfield of Lewis & Clarke: There seems to be a little misunderstanding.

Mr. Marshall of Missoula: I move to reconsider the question on the amendment offered by the gentleman from Lewis & Clarke to strike out "managers" and insert "trustees." I will state at the time that question was put several of us understood we were voting on striking out the whole section.

The President: There was an amendment offered by the gentleman from Lewis & Clarke to insert the word "trustees" in place of "managers." That motion was voted upon and lost. The gentleman from Missoula moves to reconsider the vote by which this amendment was lost.

The motion was seconded.

The Chair put the question on the reconsideration, and a vote being taken, the same was declared carried.

The President The question now stands upon the amendment and it can be renewed.

Mr. Hershfield of Lewis and Clarke renewed his motion.

The President: The gentleman moves that the word "managers" in three places, lines two, four and seven, be stricken out and the word "trustees" be inserted in lieu thereof.

The motion was seconded.

The Chair put the question on the said amendment and a vote being taken, the same was declared carried.

The President: Now, the question is upon the motion of the gentleman from Silver Bow to strike out section four.

Mr. Middleton of Custer: It seems to me that this section should be stricken out, and for the reason that in the matter of corporations there is no classification, and as has been well suggested by the gentleman from Deer Lodge (Mr. Toole) there are certain classes of corporations that desire to be in a position where they can either vote their shares of stock or vote by the person owning stock, such as building associations. Now, if this section remains, it relates to all classes of corporations that may ever at any time be organized in the State of Montana, and I do not see any necessity for it. There is a provision on the statute books now as to certain classes of corporations which does not, as I recollect it, relate to that character of corporations, such as building associations, and the presumption is that that statute will remain until there is reason to repeal or modify or change it Now, in view of that fact it will seem that this fundamental proposition ought not to be incorporated, that there may be certain classes of corporations created by statute or organized, or there may be such a classification made by statute as would render this provision a bar, or rather it might stand in the way of creating corporations of a certain character. It is pure legislation on its face and ought not to go into this provision. I hope the section will be stricken out.

The President: The question is on the adoption of the amendment.

Mr. Collins of Cascade: I hope that the section will not be stricken out. I cannot for the life of me conceive of a corporation that can get along without a board of trustees. Now, a board of trustees may be three or it may be three hundred. If the entire corporation wishes to run the concerns of it and each one to vote, then they can all be trustees; but the corporation must provide for trustees, and more particularly the special corporations mentioned by the gentleman—building associations—and this particular provision or inhibition in this section applies more to that class of corporations than any other, it provides that a minority in a building association or in any corporation of that kind shall have a representation upon the board. I believe that this is legislation certainly, but it is such legislation as we have had and have proven is good, and I cannot conceive how it can be changed for the better; so that it seems to me it should be placed in the constitution.

Mr. Middleton of Custer If this provision remains, how can a corporation, if it see fit to do so, vote its stockholders instead of its stock?

Mr. Collins of Cascade: A corporation can vote its stockholders instead of its stock when it provides that its trustees shall equal its stockholders, whether they be three or three hundred.

Mr. Knowles of Silver Bow: I would like to know how you would vote for trustees or directors of a corporation when they have no stock.

Mr. Collins of Cascade: You cannot, certainly.

Mr. Knowles of Silver Bow: Well, now, there are certain classes of corporations that have no stock—corporations of Odd Fellows, church corporations, etc. How are you going to do with those?

Mr. Collins of Cascade: Church corporations and benevolent society organizations are incorporated always by trustees, and those trustees are the same identically as the trustees of industrial organizations, and the trustees manage the affairs of that corporation.

Mr. Middleton of Custer: Does not this provide for industrial corporations?

Mr. Collins of Cascade: Certainly; and under that broad term you would include those other institutions. Every corporation must be governed by trustees, and the minority in every corporation, whether it be a church corporation or whatever else, ought to be represented upon that board of trustees. So I believe this section should remain.

Mr. Hershfield of Lewis & Clarke: How is the minority going to get representation in a board where there are no shares of stock?

Mr. Collins of Cascade: By property. There are no shares but there is property, and those persons representing that property should run it. I cannot conceive of any corporation that can run without trustees, and the power which creates those trustees, if there is a minority in that power, should insist upon the right of selecting some of those trustees; and there is always a minority in a matter of that kind, whether it is a church organization or what not.

Mr. Hogan of Silver Bow: I certainly hope this motion will prevail and that this section will be stricken out. I do not think it ought to go into the constitution. I do not feel like my friend from Cascade; I think we should leave this for the future legislatures to do. It is on the statutes now and I presume it is a good law. If it suits the people it will remain there, and if it doesn't suit them it will give the people a chance to change it. This law will suit a great many now, but there may be other people hereafter who would like to incorporate and start different institutions which under this present law they could not. I certainly will favor the motion to strike out, and think it is a good motion. I think this can safely be left to the legislature and they will certainly suit the people better.

Mr. Hartman of Gallatin: I do not desire to cut off debate on this matter, and it is the first time I have moved the pervious question, but I think the discussion has gone far enough, and I therefore move the previous question.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Gallatin, and a vote being taken, the same was declared carried.

The President: The question now is upon the motion of the gentleman from Silver Bow to strike out Section 4.

Mr. Fields of Park called for the ayes and nays on the question.

There being no objection, the Clerk called the roll.

The vote stood as follows:

Ayes: Breen, Burleigh, Burns, Edward; Cardwell, Carpenter, Chessman, Courtney, Dyer, Fields, Gaylord, Goddard, Hartman, Hershfield, Hogan Kanouse, Kennedy, Knippenberg, Knowles, Maginnis, Middleton, Mitchell, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Toole, J. R., Witter—29.

Nays: Aiken, Bickford, Browne, Buford, Bullard, Burns, A. J.; Burns, A. F.; Callaway, Cauby, Collins, Conrad, Cooper, Craven, Dixon, Durfee, Gibson, Gillette, Graves, Hammond, Haskell, Hatch, Hickman, Hobson, Joyes, Kohrs, Loud, Marshall, Marion, Hayger, Myers, Rotwitt, Stapleton, Toole, Jos. K.; Warren, Watson, Whitehill, Winston, Mr. President—38.

Absent: Brazleton, Eaton, Joy, Luce, McAdow, Muth, Parberry, Webster—8.

The motion to strike out Section 4 was declared lost.

The President: The convention will now proceed to the consideration of the other amendments.

The Clerk read as follows: Amend Section three (3) by inserting after the word "constitution" in the second line the words "or which may be hereafter incorporated."

The amendment, on motion, duly seconded, was declared adopted.

The President: This leaves all of the amendments reported by the committee of the whole disposed of . Are there any other amendments?

Mr. Warren of Silver Bow: I move the proposition be placed on its final passage:

The motion was seconded.

The President. It is moved and seconded that the rules be suspended and Proposition No. 31 placed upon its final passage.

The motion was put and carried.

The President. The question now is upon the adoption of Proposition No. 31 as amended. The ayes and nays will be entered on the journal.

The Clerk called the roll.

When the name of Mr. Middleton of Custer was reached the gentleman rose:

Mr. Middleton of Custer: I desire to explain my vote on this matter.

The President: The Chair announced today that no interruption would be permitted during roll call, except by unanimous consent.

Mr. Middleton of Custer: That would be a new rule to me.

The President: It is a rule adopted by all parliamentary bodies; it is a rule that the Chair holds to be correct, and the gentleman will not be heard except by unanimous consent. If there be no objection the gentleman from Custer will be heard.

Mr. Middleton of Custer: This article 31, Mr. President, relates to all classes of corporations outside of municipal In my judgment a corporation should stand on identically the same footing with an individual, that although it is a creature of the law it should have the same rights, and be subject to the same liabilities as an individual. In my opinion there are limitations and inhibitions in many of the sections of this article that are absolutely unjust and unfair, not only to one class of corporations but to many kinds of corporations that I can conceive of. On the other hand. Mr. President, the liabilities, in my judgment, of a corporation should be the same as those of an individual partner in a partnership. When persons purchase stock in a stock company, a corporation, they should individually be liable for the indebtedness of the concern; and in view of those facts, that it is in the first place unfair to the corporations by placing limitations and inhibitions on them that are absolutely iron-bound and entirely different from those that are placed upon any other class, either of individuals or companies, and on the other hand exempting them from the liabilities of individuals and partnerships, my vote will be no.

The vote s tood as follows:

Ayes: Aiken, Bickford, Breen, Browne, Buford, Bullard, Burns, A. F.; Burns, A. J.; Burns, Edward, Callaway, Cardwell, Carpenter, Cauby Chessman, Collins, Conrad, Cooper. Courtney, Craven, Dixon, Durfee, Dyer, Gaylord, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Hershfield, Hickman, Hobson, Hogan, Joyes, Kanouse, Kennedy, Knippenberg, Knowles, Kohrs, Loud, Maginnis, Marion, Marshall, Mayger, Mitchell, Myers, Ramsdell, Reek, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, Jos K.; Toole, J. R.; Warren, Watson, Whitehill, Winston, Witter, Mr. President—63.

Nays: Fields, Middleton—2

Absent: Brazleton, Eaton, Joy, Luce, McAdow, Muth, Parberry, Webster—8.

The President: The motion to adopt Proposition No. 31 is carried, and the proposition will be referred to the engrossing committee.

Mr. Rickards of Silver Bow: I move we do now adjourn.

The motion was seconded.

The Chair put the question on the motion, and the vote being taken, the same was declared carried.

The convention stood adjourned until Wednesday, August 7th, 1889, at 10 o'clock A. M.

TWENTY-EIGHTH DAY.

Wednesday, August 7th, 1889.

The convention was called to order by the President at 10 A. M.

The Clerk called the roll.

The Chaplain offered prayer.

The Clerk read the journal of the previous day.

Mr. Robinson of Deer Lodge sent a proposition to the Clerk's desk.

The President: The Clerk will read the Proposition of the gentleman from Deer Lodge.

The Clerk read as follows: Proposition No. 37. Construction of words: That wherever in this constitution the word "May" occurs the same shall be construed to be directory, and wherever the word "shall" occurs the same shall be construed to be mandatory.

The President: What is the pleasure of the convention concerning this proposition?

Mr. Robinson of Deer Lodge: I move the adoption of the proposition.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was daclared carried.

A member called for a division on the question.

Mr. Rickards of Silver Bow: Before we vote on that proposition or resolution, it seems to me it is not clear enough. It says, wherever the word "shall" occurs, and that is very sweeping. It will occur several times in the constitution and I don't know that this convention is prepared to say it shall be mandatory. I would like the gentleman to explain just what his resolution does mean. If it applies only to what the legislative assembly shall do, I think we are prepared to vote upon it.

Mr. Robinson of Deer Lodge: It is a construction of words so as to avoid any ambiguity in the sense of the convention where it uses these words. It seems to me it is necessary to put this in.

The President: A division is called for upon the question

Mr. Cooper of Gallatin called for the reading of the resolution.

The Clerk read the resolution.

Mr. Collins of Cascade: I move its reference to the Judiciary Committee.

The motion was seconded.

The President: If there be no objection it will be so referred. The Chair desires to state that he overlooked the fact that a special committee on the memorial introduced by the gentleman from Silver Bow is to be announced and desires a little further time. The committee will be announced during the day.

Mr. J. R Toole of Deer Lodge: I move you that the convention resolve itself into committee of the whole for the purpose of further considering Proposition No. 18, General File No. 17. It was made a special order for this time.

The motion was seconded.

The Chair put the question on the motion, and a vote being taken, the same was declared carried.

The President: While we had under consideration this proposition, Mr. Hershfield of Lewis and Clarke was chairman of the committee of the whole, and he will now be called upon to resume the chair.

IN COMMITTEE OF THE WHOLE.

Mr. Hershfield of Lewis & Clarke in the chair.

The committee was called to order.

The Chairman: Under the rules, on the 27th of last month we had under consideration Section 2 of Proposition No. 18. What is the further pleasure of the committee on that subject?

Mr. Maginnis of Lewis & Clarke: I rise to renew the motion which I had submitted at the time the committee rose.

The Chairman: The gentleman from Lewis & Clarke, Mr. Maginnis, offers the following amendment to Proposition No 18, Section 2.

Mr. Warren of Silver Bow: I object. That Section 2 has been adopted by the committee.

The Chairman: What is the objection

Mr. Warren of Silver Bow: Section 2 has been adopted in the committee of the whole and is *not subject to amendment.*

The Chairman: If the Chair is not in error, I think that section has not been acted upon.

Mr. Warren of Silver Bow. I ask for the reading of the minutes.

Mr Maginnis of Lewis & Clarke Mr. Chairman, when this committee rose, I was on my feet and made the motion which you now hold in your hand, when the gentleman from Silver Bow (Mr. Warren) rose and interrupted me.

The Chairman: I think the gentleman from Silver Bow (Mr. Warren) will find that to be the case. I will further state to the gentleman from Silver Bow that there are no minutes of the proceedings for the reason that the chairman of the committee stated to the president of the convention that progress had been made on this matter and that the committee wanted further time.

Mr. Maginnis of Lewis & Clarke: I ask to have the amendment read.

The Chairman: The Clerk will read the amendment.

The Clerk read as follows: Amend Proposition No. 18, Section 2, by striking out in line two the words "at its third regular session," and strike out in lines nine and ten, Section 2, all the words of the proviso after the words "general election."

Mr. Maginnis of Lewis & Clarke I ask to have the section read, with the amendment, as it would stand if adopted.

Mr. Collins of Cascade: I ask for a division of the motion of the gentleman from Lewis & Clarke (Mr Maginnis).

The Chairman: The gentleman from Lewis & Clarke offers an amendment, on which the gentleman from Cascade (Mr Collins) calls for a division.

Mr. Maginnis of Lewis & Clarke. Before the amendment is placed before the house I would like to have the section read as it would be with my amendment.

The Clerk read as follows "Section 2 The Legislative Assembly shall have no power to change or locate the seat of government of the State, but shall after the adoption of this constitution provide by law for submitting the question of the permanent location of the seat of government to the qualified electors of the State at the general election then next ensuing, and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said Legislative Assembly shall also provide that in case there shall be no choice of location at said election the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the State at the next general election"

Mr. Maginnis, of Lewis & Clarke: A few words before I yield the floor, merely explanatory of the amendment. It will be seen that the amendment leaves out any reference to the first regular session of the Legislature, because it provides that it shall be at the first election after the adoption of the constitution. The words "first regular session" are not necessary, because the continuation of the text says that at the first general election after the adoption of the constitution the question shall be submitted to the people of the State for their vote.

Mr. Warren, of Silver Bow: My only object, Mr. Chairman, in bringing this matter of striking out the word "third" and inserting "first" up, is that the people of this State shall have an opportunity to vote upon the location of the seat of government, and the sooner it is brought to a vote the sooner the matter will be settled. If I understand the amendment, at any time we can hold the Legislature down and keep them from passing that law.

Mr. Maginnis, of Lewis & Clarke: I am willing to accept the gentleman's amendment, but if he will listen to me a moment he will see that it is unnecessary. The amendment reads "At the general election next ensuing."

The Chairman: You accept the amendment of the gentleman from Silver Bow?

Mr. Maginnis, of Lewis & Clarke: Yes sir.

Mr. Rickards, of Silver Bow: I would like to state the reasons briefly that actuated the committee I do not believe, Mr. Chairman and gentlemen, that anyone will rise to his feet on this floor and claim that it is an opportune time to permanently locate the capital of Montana. This matter was discussed in the committee room. We have seen within the last five years a town spring up to a population of five or six thousand people where five or six years ago there was not an inhabitant, and we believe it is not only likely but altogether probable that there will be within the next five or six years another town and possibly a second, and possibly a third town spring up. So that we believe we had better wait a few years before we permanently locate the capital of Montana. And it was for this reason that the committee thought it best in locating the capital temporarily to leave it there until the expiration, say, of eight or ten years. Now, you will notice that if at the third regular session the Legislative Assembly shall take up this matter and submit it to the vote of the people, that will be the year of 1895. We have further provided that if no place receive a majority of all the votes cast, that the two places receiving the highest number of votes shall be re-submitted at the following general election, and the place receiving the highest number of votes shall be determined upon as the permanent capital of Montana. Now, Mr. Chairman, I do not believe that when we consider that after the adoption of this constitution it is altogether likely that there will be a large immigration into Montana, for if we do not have this experience it will be unlike that of any other State after the adoption of its constitution—it is a wise thing to do. We confidently expect a large influx of immigration and we just as confidently expect that there will be somewhere—we cannot tell where—but we believe on the west side, two or three towns that within the next eight or ten years, and that are unknown today, will have a population of from 5,000 to 8,000 people. Therefore, I do not believe it is best that the Legislature at its first regular session shall submit this matter to the vote of the people. The time is not ripe; it is not the opportune time for the settling of the permanent location of the capital of Montana. For that reason, I hope this amendment will not prevail and that the report as it came from your committee will prevail. I think the more we consider this the better reasons you will see for it.

Mr. J. R. Toole of Deer Lodge: I desire to have this question presented now in the amendment and in two separate propositions. One is in relation to fixing the time when the Legislature shall provide for the location, when the location shall take place. The other is, striking out the proviso in the last part of the section, which leaves the matter of the temporary capital without any disposition. The resolution introduced by the gentleman from Lewis & Clarke contains two separate propositions. and I ask for a division of the question; first, on the proposition to make the first Legislature provide for the location, and second upon striking out the proviso.

The Chairman: The question is on the amendment of the gentleman from Lewis & Clarke (Mr. Maginnis) striking out in line two the words "at its third regular session" and amended by the gentleman from Silver Bow to read "at its first regular session". The committee will vote on the insertion of the word "first" instead of "third".

Mr. Collins, of Cascade: Is an amendment in order at present?

The Chairman: Not now. A division has been called for.

The Chair put the question on the said amendment, and the same was declared carried by a vote of 42 in the affirmative to 13 in the negative.

Mr. J. R. Toole, of Deer Lodge: I want to say a word in relation to striking out this proviso, and that is this: I would like to have the question remain where it is now. It is a hard matter in the Committee of the Whole to get a correct expression, and if this proviso is stricken out now there is no doubt an amendment will be offered in convention and we will go through the same routine. It seems to me, in order to facilitate business, it is well to let this remain.

Mr. Maginnis, of Lewis & Clarke: How does the proviso read now

Mr. J. R. Toole, of Deer Lodge: It reads as it was reported by the Committee of the Whole. There was a blank here, or a vacancy, which has not been filled. It seems to me that the committee saw fit the other day to insert the word "Anaconda"; so now it reads as follows: "That the seat of government shall be and remain at the city of Anaconda." It is ample time to facilitate the work of the convention to let it remain as it is.

The Chairman: The question now is on the second division of the amendment as offered by the gentleman from Lewis & Clarke. Those who are in favor of the adoption of the amendment say aye.

The Chair declared the amendment lost.

Mr. J. R. Toole, of Deer Lodge: I move the adoption of the section as amended.

Mr. Collins, of Cascade. I offer an amendment. I move that in line two of the printed copy you insert "at its second regular session"

The amendment was seconded.

Mr Robinson, of Deer Lodge: I understand the committee have adopted the amendment of the gentleman from Silver Bow County, providing that the Legislature shall provide at its first session—at the next general election after the first session of the Legislature. Now, that has been adopted and passed on, and I don't understand it can be changed except by reconsidering the vote.

Mr. Collins, of Cascade: Before the Chair decides that matter, I wish to state the proposition. A motion was made that the words "at its first regular session" be stricken out. That motion was carried; there was no motion to insert a word; so that under all parliamentary usages my motion to amend is in order.

Mr. J. R. Toole, of Deer Lodge: My understanding was that the amendment offered by the gentleman from Silver Bow was accepted. The word "first" fills the blank.

Mr Collins, of Cascade: But even if that proposition is true, I claim that while the question is under consideration it may be amended as many times as amendments are germane to the proposition, and my motion to amend by inserting "two" has never been before this committee and is certainly in order. It is only reasonable that it should be if the Chair should even decide that it should not be. It will be in order before the convention, but now is the time to bring the matter up.

Mr. Maginnis, of Lewis & Clarke: I rise to speak on the amendment I offered, the amendment striking out the proviso because there was no need of a proviso. The Organic Act and the laws of the State of Montana fix the seat of government of this Territory until it shall be removed. There has been no popular demand for its removal, no petition, no meeting of the people, no agitation to remove the capital The members of the convention who came here were not elected on that issue, nor was that question at all discussed as bearing on their election. The Congress that framed this Enabling Act under which we are acting never contemplated that the question should arise in this convention. It was my pleasure to sit the other day with five or six gentlemen, members of Congress, all of whom had voted for this Enabling Act, and every one of them was astonished that the convention should assume that it had any jurisdiction over this capital question other than to commit it to the Legislature and the people They are all sitting in Territories where questions similar to this will arise. The seat of government of Washington is at Olympia, a little town on the extreme outskirts of the Territory, and the very first act of its Legislature will be to remove that capital and fix the permanent seat of government of the State of Washington. But it never entered into the minds of our sister convention sitting in Washington Territory that they should assume jurisdiction of this matter and remove the territorial seat of government, or do anything else except provide that the seat of government of the State should be submitted by the Legislature to the vote of the people. In both North and South Dakota the place for the capital has been a burning question. But in neither of the conventions of the two Territories has it been assumed that they had control of the seat of government, or any authority to fix either a permanent or temporary seat of government. Why should we go beyond them? Why do we do this which our neighbors do not presume to do? There is no reason given. There is no reason to be given. There is no reason why this vexed question should be interjected into our canvas, or our campaign this fall. Why has the apple of discord been thrown into this convention? We have claimed Montana to be equal in public spirit, to be abreast in patriotism and good citizenship with our sister Territories. Why, when they go on and confine themselves to the duties for which they were called together, the duties of framing an organic act to be submitted to the people, and confine themselves within their proper limits, why do we, who have claimed to be superior to them all, allow this apple of discord to be flung into our midst and go outside of our province to discuss extraneous questions.

We were here as harmonious as conventions reasonably may be. On all these questions that came up we have had our differences or our dissensions. None of us has had our way entirely. Some of us were voted down on matters that we believed to be very essential to popular government. There is scarcely a man in the convention who has not been voted down on some proposition in which he believed. But we all *submitted to the result. Going on in this harmonious way*, why is this thing thrown in here? Shall we resolve this convention, framed to form a law for the people, into a convention of jobbers, intent only on dividing up the spoils? Will that add to our dignity, to the place that we will have in the history of this State, before our people? Or shall we, confining ourselves to the work for which we were sent here, properly provide that this question shall be submitted to the only tribunal that ought to decide it—the people of the Territory? (Applause in the galleries) It is a question, my friends, whether we have the power to do it. But even if we had the power, should we abuse it? If this were submitted even as a separate proposition, the people would have the right to vote on it. But you are attempting to embody it and crystallize it in the constitution, leaving to them no issue except to vote against the constitution or to vote against their most cherished feelings in this matter. I ask you, my friends, is it right to make the constitution a pack horse to carry everybody's scheme through this territorial election? (Applause in the galleries) I appeal to you as a matter of equity and justice, if that is a right and a proper thing to do. The Legislature of this State will certainly have intelligence enough to frame a law to submit this question to the people. It will be submitted to the people of Montana: it will be discussed in all its bearings; the proposition advanced by my friend from Silver Bow (Mr. Rickards) will be taken into consideration. The growth of towns and mines on the west side will be discussed; the magnificent valleys that lie to our north, with their incoming population, will be a part of the discussion. We will see the new empires that are to be built up in those valleys. The people that come into the Yellowstone country, the people that come into all the various portions of this great State, and the proper and convenient center for the transaction of the business of this great State, having been discussed by all the people of the State, will be settled at the polls in accordance with the privileges of freemen.

At this point the demonstrations of applause in the galleries became pronounced and irrepressible. Mr. Luce, of Gallatin, requested that the sergeant-at-arms be instructed to preserve order. The Chair announced that the galleries would be cleared if the demonstrations did not cease.

The speaker continued: When that time shall come, Mr. Chairman, and not before, for we do not desire to insert the name of Helena in this constitution, when that time comes, the constituents that I represent here will be prepared to present their claims, not to the Legislature, not to any convention, but to all the people of the State of Montana. They will endeavor to show that this point is central and as convenient as any other; that the travel from the Yellowstone to the Missoula country passes through it, and finds it a central point; that the travel from Great Falls and Choteau to Butte and Dillon, and the towns below, pass through it, and find it a central point in their journey; that it is the pivotal point of the population of Montana; that it can be reached more conveniently than any other place. Gentlemen talk about four or five trains running out of their towns. Twenty-one daily passenger trains run out of the city of Helena, and fifty will run out of it before two years are ended. In the matter of time it cannot be matched. And now, my friends, a good friend of mine said the other day, and I must say that the spirit of jealousy and rivalry rises in all places, that Helena was selfish and wanted everything. What has it had except the capital? What money does it get out of the Territory of Montana? $140,000 a year for the support of prisoners and the insane are spent in one county in this Territory, and now you propose to move the capital to that county, so that every dollar of territorial money shall be spent in one county as against the other fifteen. Is that right, or just, or generous, or fair? Where is the selfishness that crops out in a proposition of that kind? You say that Helena has had everything. Point me to anything that she has had except the seat of government, with the officers that come from it. Whatever has been paid out here has been paid out of the United States, while the great expenditures of your Territory have never been made in this locality; and as I have said, it is the very locality where nine-tenths of the taxes are disbursed. To that you now propose the other tenth shall be added. I ask you can you face a proposition like that? My friends, we all ought to be proud of every growing town in Montana; we all ought to be proud of the industry, of the enterprise, and of the energy that has builded them up, and in the van of that enterprise the citizens of this town—unofficial citizens—simple citizens—have had their share. My friend from Custer (Mr Middleton) spoke the other day about the selfishness of this town. The town he comes from was founded by a Helena man. It was cut out of a military reservation and dedicated to freedom and to its citizens, by a Helena man—after it had been locked up by the commander of this department and an officer of his staff given the sole commercial control of it, it was thrown open that you might build a city there; and the first man that put a dollar in it was Matt Carroll of this town. Your County of Dawson was organized by an act of Congress, supported by the citizens of this place If the northern part of this Territory, which has been for years a solitude, a barren waste inhabited only by the Indians, the wolf and the coyote, is at last open to civilization, to settlement and to advancement. Who deserved the credit of it? You know that the Manitoba Railroad was brought here; you know that the Montana Central was built by the energy and enterprise of a citizen of Helena—working not only for his own town, but for the benefit of this whole Territory. You people of Butte—the older people of you—know that when it was an open proposition to build the Utah & Northern up there and develop that camp, then only a lot of shafts, that Mr. Jay Gould sent Mr. Bertrude up to this country to investigate the country. He came to this town; he was disgusted with the place; he was going back to make an adverse report upon this proposition, when a few men here raised a purse and sent me out with him to visit all the mining camps of the Territory, and especially that great camp of Butte, that he might see its resources, and out of his report came the building of that railroad which, like the touch of Aladdin's ring, has built a magnificent city upon the west side This other road, which has its termination in Butte, this Montana Central, was built, as you know, by a citizen of Helena. Your road up the Bitter Root, your road to Phillipsburg, your road to all these camps—who inspired, who conceived, who built them, not only for themselves but for the advancement of this whole Territory? You people of the Yellowstone, whose mines at Red Lodge have lain idle so long—attempted to be opened and failure after failure made—they laid there useless to you and to all the world until the citizens of Helena organized and enterprise and carried it through, which has made them successful. Where is the point in this Territory that her enterprise, her intelligence, her generosity has not reached in order to advance the interests of the whole? Selfish, of course, men are. All humanity is selfish They all work for their own advancement, their own interests and their own glory, but of those who have worked for the advancement, for the interests and for the glory, who have populated this State so that this Enabling Act became a possibility, who have builded it up so that we could become a State, the city of Helena, in all that enterprise, are in the van. and among the factors that have built up this great country; I challenge you to match her. That being here history and that being the case, this capital, which certainly will be but a beloiter, while it can do but little good to any temporary place except to make a fictitious advance in real estate, in which the fortunes of many people will be swamped hereafter. It can do but little good in that way. Shall you, out of pique—shall you, out of these little jealousies, remove the seat of government from here unfairly and unjustly by the action of this convention, without consulting the wishes of the voters and the people who sent you here, or will you go on, as our sister conventions have gone on, doing your duty under the constitution and the laws, framing a constitution of which we will all be proud, and which will be adopted, not by a divided vote, but by the almost unanimous vote of the people of Montana, fulfilling and justifying all the predictions and prophecies that we who have worked for her year after year abroad, and have spent our own money, and our own time to forward her claims, may be justified in the statements we made to eastern statesmen, when we asked them to unlock the doors and admit us into the Union. I trust, my friends, that you will be governed by a wiser and a higher sense of duty that has been advocated by some. I trust that we will remove this whole question from out of our deliberations—that we will throw this apple of discord over the fence—that we will proceed with the work for which we were sent here—that we will make a constitution that will be accepted by the people of Montana, and that will create heart-burnings among none; and thus having done our duty to those who sent us here, we will go to our homes blessed with the consciousness that we have done it well, and that the people of this territory now and forever will rise up and call us blessed. (Applause)

Mr. Ramsdell of Missoula: I do not wish to take part in the discussion here this morning on the capital question, but I believe there is one point here that possibly may be overlooked in the general scramble for this place. As the gentleman who has just taken his seat has said, I believe that when we were sent here to discharge the duties which devolved upon us, that the question of the location of the capital had no place in the minds of our constituents; and I believe that in settling this question, if it is to come up and the location is to be determined on, that we should submit it to the voters of this territory as soon as possible. I for one feel the grave responsibility that is resting upon me to vote upon this important question this morning, and although I feel that the motives of the gentleman from Cascade and from Silver Bow are probably worthy ones and that the gentleman from Cascade no doubt hopes that in the near future the broad and fertile prairies of his own county will be populous and that railroads will intersect that country and that Cascade may have a fair show in the settlement of the question, and although the gentleman from Butte possibly aspires to the same motives and hopes, and although in my own country the development of the near future may warrant the same aspirations and hopes, I believe that we are not justified in allowing this question to stretch out indefinitely As I have said, the people in my section of the country did not contemplate this issue when I was elected, and I feel that it is a great responsibility, and I feel further that in providing that this shall be submitted to the people at the first election after the adoption of this constitution, that if I have erred in this matter I shall at least be taking the right step to allow that injustice to be righted as soon as possible.

Mr. Luce of Gallatin. In speaking upon this proposition I will venture to say that the Chair will have no difficulty in preserving order in the galleries. (Laughter). I do not expect to be smothered by the perfume of beautiful flowers scattered upon my head by the ladies and gentlemen of Helena. (Laughter). Nevertheless I hope that I may have the privilege of making such feeble remarks as I may see fit to make upon this occasion, certainly without any undue influence. I agree with my friend, Mr. Maginnis, in nearly all of his remarks in relation to this great capital city of Helena, its strides in progress and the great railroad center that has been made here and the inducements that have been held out by its millionaires and those who represent other millionaires to invest their money here and make a large city. I am with him on that proposition. Helena is a prosperous place. It is not a hoggish place, as some gentleman here the other day said. It is a generous community; it is a great people. Comparatively speaking, it is a great city, that is, compared perhaps with Glendive and Bozeman, it is a metropolis. (Laughter). Compared with New York, however, it may be a country village. Notwithstanding all that, I say, taking its surroundings and all the circumstances, it is a great and comparatively a powerful city. And these great statesmen that I have conversed with, like unto my worthy friend over there (alluding to Mr. Maginnis of Lewis and Clarke) who has lately conversed with statesmen from the east, have told me that one of the greatest mistakes that a state ever could make would be to place a capital in the great metropolis of the state, where it was surrounded by all of these influences, some of which we have seen break out in the galleries here this morning (Laughter), that would almost crush any other country pumpkin but one like myself that has the adamantine cheek to get up in the face of it and make the remarks that I am about to make now (Laughter and applause). The influence of these great corporations that have been spoken of by my friend, Mr. Maginnis—the influence of these millionaires who can build cities all over the territory, will be felt by the legislature of the State of Montana if the capital be permanently located here. Now that is a subject of great consideration for my friend who spoke last before me. He seems to have been somewhat crushed by it himself. Now, sir, I want to enter upon another proposition. I think I have said all that is necessary for me to say in behalf of Helena. I believe in her. She has more varied industries, more enterprises, than any other city in the territory of Montana today. Now, down in our little county of Gallatin the principal industries are agricultural. Around about Helena we have agriculture. If we go over on the west side into the great county of Silver Bow, the principal industry is mining; but we have that industry in the county of Lewis & Clarke. And so I may go on. This county probably has a greater variety of industries, a greater variety of influences and perhaps a larger number of millionaires and representatives of millionaires than any other county in the territory. Now, if that is the reason for establishing the capital here, I do not understand it Put it in some quiet places where your nostrils are not forever offended with dust, and where you are not in the great danger of breaking your necks in the winter time. (Laughter). Take it, for heaven's sake, where you can see green fields once in a while and flowing streams of water. Put it over at Bozeman (laughter) among an honest set of people that I venture to say will never undertake to have any undue influence over any great statesman that may be elected either to the Senate or to the House of Representatives of the Legislature of the State of Montana. We have everything there that is suitable, you know, for a capital As I said, we raise the finest potatoes in the Territory of Montana; and what is better for the intellect of a great statesman than fine potatoes? (Laughter). Then again, those people over there are educated and refined and, although not all of us are millionaires, we have some, that is to say, we have one. (Laughter). We are noted for having the best schools today in the territory. We have fine schools, beautiful ladies, and some intelligent men, we make an exception of those that have been sent to this convention. (Laughter). Now there is a point that the state might be proud to erect the finest buildings, and buildings that would be worth all the generosity of the millionaires of Helena and of Butte and of Anaconda and Deer Lodge. But there is something that is quite misleading in the remarks of my worthy friend from Lewis & Clarke. He thinks that this is no time or place for the naming of any city or town for the temporary locationo of the seat of government of this state. There, I think, is where the gentleman makes his fatal mistake. Everything else that he said I heartily concurred with, except that Helena is the place for the capitol. (Laughter). Now, I would ask the gentleman, and I would ask this convention, where would your next legislature meet? Why, Mr. Maginnis would have you understand that it would meet where it has ever since they dragged it away from Virginia City—in the City of Helena. By what authority would it meet there? Let us read a little. Section 1445 of what is known as the Organic Act provides as follows: "The members of the legislative assembly of Montana and Idaho Territories shall each receive—" No that is not it. (Laughter) "The seat of government when once fixed by the governor and legislative assembly of Idaho and Montana respectively shall not be at any time changed except by an act of such assembly for each territory respectively, duly passed and approved, after due notice, at the first general election thereafter by a majority of the legal votes cast on that question." Now, then, I understand that the seat of government for the Territory of Montana has been fixed at Helena. That is all right The seat of government for the State of Montana has not been fixed, either temporarily or permanently, at any place. Gentlemen say here that they do not come from their constituents with this proposition—they had no instruction from the voters in relation to this proposition. Nor do I take it had they any instructions in relation to any particular proposition. For instance, we have made a material change in the judiciary of Montana, and we have provided for the removal of probate judges. I didn't come here with that proposition, nor instructed upon that proposition, and the argument seems to be that before we can take any action here in this convention upon any such proposition, it must first be submitted to the people to say whether they want it or not. They sent us here to frame a constitution, and I undertake to say that unless there is named some place for the temporary seat of government for the State of Montana, there is no place at which the legislature can meet; there is no place for the meeting of your supreme court. This seat of government is for the Territory of Montana. When this constitution that we are endeavoring to frame, and which I hope and pray we may get through with before the general election that is ordered by the Enabling Act (laughter) —we expect in this constitutional convention to do everything that shall put a state into motion that shall make one of the severeign states of this Union, and in order to have a sovereign state, that state must have a seat of government, and that seat of government must not be going around upon wheels from Anaconda to Bozeman, and from Bozeman to Glendive, and from Glendive to Great Falls, and from Great Falls back to Helena again. There must be some place named in this constitution for the temporary seat of government at least; nobody proposed here to make a permanent seat of government anyway; it is simply a temporary seat of government until the people can be heard upon this proposition and let them locate it. I say, with all due regard to the astonishment of the great statesmen of the East that my friend, Mr. Maginnis, has talked with, that they are mistaken if they think that this convention should not name the temporary seat of government. Would you have your legislators wandering around, part of them going to the city where it is now temporarily located—I have forgotten the name of it—Anaconda (laughter), and part of them going to Butte, some of them coming over here to Helena, and most of them going to Bozeman, because it is the prettiest place to go to. Where would your legislature be? Why, it would be spread all over the State of Montana. You could never find it or get it back, or to enact any laws at all. I do say with all respect to the advice of these statesmen from the East, that they are mistaken, and I say if Washington Territory has not provided for a temporary seat of government it is the grandest blunder that was ever made in any constitutional convention on earth. Now, all that is provided in this Enabling Act that the gentleman spoke of, is in Section 4. That the delegates to the convention selected as provided in this Act shall meet at the seat of government in each of said Territories, except the delegates from South Dakota," etc. That is all. They meet at the seat of government. That means something, because we have a seat of government for the Territory of Montana, and we know where to go to. But if we should provide here, instead of naming any place for the temporary seat of government—if we should provide that the legislature should meet at the seat of government of the State of Montana, I would like to ask my learned friend over there where they would meet No. this thing must be met. Disagreeable as it may seem, it must be met. Now, I undertake to say in reply to my friend from Silver Bow, that it is not altogether necessary to wait for new towns to grow up in order that we may take one of these new towns for the seat of government; for it appears that there are too many towns that want to be honored by the seat of government—too many towns that would like to have it located with them. There are towns enough, God knows; the only trouble now is to select one for the seat of government. (Laughter). And I undertake to say that it matters not where you locate it, for when the good sense of the people returns, when the people of Montana take a calm and rational view of this thing and undertake to locate the seat of government permanently, they will locate it over in Bozeman (applause), where it ought to be from its central location, and from every other consideration that you can imagine. Now, I am not unfriendly to Helena; I like the Helena people and like the town; I like to see it grow; It makes a great demand for our potatoes and hay and oats over there in the Gallatin Valley. May she grow within the next ten years to be a city of 100,000 people. (Applause). But its great growth and its great prosperity and its great influence, I say, are reasons why the seat of government of a small and growing state like this should not be permanently located within its midst. There is too much influence. Now, if there are gentlemen younger than I am who would to any extent be influenced by the galleries, if they were on the floor of the House of Representatives or the Senate of the State of Montana, these influences can be and will be brought to bear upon legislators just the same as they have attempted to be brought upon this convention. Now, I am not adverse particularly to a temporary location of the capitol in Helena if that would not mean the permanent location of it. And as to my views here as to what I would do upon this question, I have but one thing to say for a dead certainty, and that is, if I get an opportunity to vote for the glorious little city of Bozeman down there for the temporary seat of this capital, I am going to do it. (Applause).

Mr J. R. Toole of Deer Lodge: Although unlike my friend from Gallatin who last had the floor, I am young and timid, with a somewhat retiring disposition, yet I feel impelled to face the galleries even and say a few words with regard to the position I find myself in, particularly in regard to my esteemed and honorable friend from Lewis & Clarke. I was somewhat surprised that the gentleman should manifest any heat in relation to this matter; that he should brand this innocent little blank here as an apple of discord in this convention, because as my friend, Judge Luce, so well said, the blank was there; action had to be taken on it and it had to be filled up with the name of some place that the people deemed most fit. Instead, sir, of this being an apple of discord and creating any ill-feeling, I think it is a matter that any citizen of Montana might well be proud of. It presents itself to us in this light, that there are in this growing territory and prosperous state to come a half dozen cities, any one of which are worthy to be mentioned in this connection, that is to say, the temporary location of the capital—any one of whom are amply able and qualified to take the responsibility and share the burdens that have been borne so long by this city here, until the permanent location of the seat of government by the people of the state. We have no desire and no feeling of creating any discord in our deliberations on this matter. It is something that we must take as it comes, and settle it, and settle it in a kindly and harmonious manner, and it is only proper and just that those who have preferences and believe sincerely and honestly in the merits of their claims should present them and have them acted upon by the convention and to abide with the best of good feeling the result of that action I say for one, so far as I am concerned, whatever may be the final result of the deliberations of the convention on this matter, that I will be satisfied and pleased with it. There will be no apple of discord in connection with the matter so far as I am concerned. My friend, Judge Luce, made a remark which calls to my mind one feature of the case that I am about to present, and that is this: He was hardly aware that there was such a town as Anaconda in existence, and I regret that there are some few of the members here who were called upon to vote on this matter who perhaps were not aware of our true position on that side of the mountain, and for their benefit and for the benefit of this convention I wish to make a few statements and I wish to make them conservatively and conscientiously, and if I misstate or misquote anything I desire simply to be corrected. Now, we realize the fact that this is only a temporary solution of the question in any event, it is a matter that will remaain as it is fixed here only for a year or two at the outside, and then the voice of the people will decide it; and in asking for its temporary location, we want to present the claims of our town, and to have them counted in in the generous rivalry for a place to be named for the temporary capital. We claim three or four things that will be necessary for the temporary location of the capital of this state. In the first place, in my mind, it should be easy of access; it should be central as regards the present population for the next year or two, not what it may be ten or fifteen years from now, but what it is now. In the next place, the city should have ample accommodations for the state officers and the officers of the government who are obliged to go there and live. It should have all the conveniences of modern civilization, and I claim and assert now that we have all those in our city of Anaconda. I assert, first, that we have the best railroad facilities of any city in Montana. I will not go into details, but I claimed and asserted here the other day that the railroads would verify what I said, that the business done there was three millions of dollars a year, and that was questioned here, and so I sent and got the exact figures, which I find to be $2,700,000 and odd dollars. I claim and ask that it be considered that at almost any hour of the day or night we have railroad accommodations for getting in or out of town. I need not say that we have the best hotel accommodations of any place in this territory or any adjacent territory. That goes without controversy I need not say either that we have the finest system of water. We have the best system of electric lights in Montana. We have everything there that would conduce to the ease and comfort of the members of the legislative assembly duly elected, for a year or two. If it was a permanent thing we would not ask it; but for a temporary place, we claim that we have every facility presented by any city in Montana Territory; and in talking about that there is another point that I wish to mention, and that is: It has been asserted that the people from the eastern portion of the territory will have to travel further than they do now. I have it from the superintendents of two lines of railroad here that when the short line is completed from Gallatin City to Butte that the difference in time from all points east of Gallatin between the city of Helena and the city of Anaconda would be the same, and another said it would be thirty minutes longer. So there is no good reasonable objection that I can see against the presentation at least of the name of our prosperous city The gentleman says we have two state institutions already. I wish to remind him that these institutions, one of them at least, is a private enterprise. It is of no particular benefit to the county of Deer Lodge, nor would it be to the county of Lewis &

Clarke or any other county. Those institutions that we have in Deer Lodge County now we are willing anybody that wants them should have them. They are not definitely settled. They will be parceled out by the next legislature, to be divided up with some other portion of the territory, Now, I have made this statement, honestly, sincerely and conscientiously. If I have stated anything that is not true here that any of the members of the convention are aware of, I desire to be corrected. And another matter. It was said that there might be some expense. In order to meet that I made a proposition here the other day which I am ready to reiterate now, and that is that the city will furnish a temporary capitol, quarters for the state officers, accommodations, etc., and a building for the legislature to meet in. So it will be a matter of saving. If the convention sees fit to accept that proposition we will be glad to tender it to them again; if not, we will be glad to tender the hospitalities of the city to them anyway if they see fit to locate the capital there. We present our claim honestly. We know that we are justified in asserting that we have the best accommodations, and we desire honestly and sincerely to advocate them. We have no jobs or schemes here of any kind, but simply in a plain, unvarnished way desire to present to the members of this convention our claims for the possession of the capital temporarily for the State of Montana.

Mr. Burleigh of Custer: I have listened with very great interest to the discussion so far as it has gone, but it seems to me there is one point that has not been sufficiently dwelt upon, and while I was thinking of it at the time that my friend from Lewis & Clarke County was speaking upon this subject, his eloquence almost rendered me oblivious to this essential feature which should enter into the discussion and consideration of this question, and that is this: It is as to the permanent location of the capital spoken of by my friend who sits before me, from Silver Bow County (Mr. Rickards) and I think the people of this Territory should not be in a haste in selecting a permanent location for the capital. After it is located it will probably be many years, or it may be many generations, and perhaps centuries, before it is removed; and wherever a capital has been located early by any state in this Union, or by many states in this Union, they have regretted a hasty action at their leisure, and have been compelled in some cases to expend large amounts of money in making a new location to suit the growing wants of the people. Now, it would be a great misfortune to provide that the first or the second or the third legislature should permanently locate this capital in a country like this where its developments depend upon so many circumstances, upon so much labor and such vast expenditures of money. Not that I would wait for some great metropolis in which to locate it; but in order to accommodate the wants, the necessities and the conveniences of the people. I do not think there is any harm in providing for a temporary location of this capital here. It is temporary only, and whenever the wants of the people require it to be located somewhere else permanently they will locate it there and locate it by their suffrages, and there it will remain. Now, my friend from Lewis & Clarke (Mr. Maginnis) in growing eloquence spoke of his own city. I love a man who loves his friends; I love a man who is true to his friends and to his home and his fireside and his neighbors. I despise the man who would forsake them in the hour of their need and their emergency and seek new friends at their expense. I admire my friend for his fidelity to the people of Lewis & Clarke county, and he is merely returning them gratitude for that gratitude they have shown him when he asked them for a favor. The man who will fail to do it is not worthy of the consideration or the confidence of any human being. But while he speaks in such exalted terms of what these people have done here—what they have done for Custer County, for Dawson County, through the agency of my friend, Matt Carroll and some others, it occurred to me that perhaps with his artistic brush he had overdrawn the picture a little—perhaps not as viewed through his optics, but certainly so as viewed through mine. When he spoke of what Lewis & Clarke County had done for the smaller counties, he spoke sincerely and from an honest and sincere heart, but misguided judgment I think. And he reminded me of a story, and you will pardon me for relating it, because it is more expressive than any language I can use, told by a general during the war. In one of his raids through the South he had a man in his regiment by the name of Patrick O'Flaherty, and Patrick insisted on every occasion that he was with the Duke of Wellington at the battle of Waterloo and that without his presence the Duke would never have won the battle. "Why," said he, "how old a man are you?" "45, sir." "Why, sir, that was 10 or 15 or 20 years before you were born." "It doesn't make any difference, I was there all the same; and," said he, "I can relate an anecdote." "Well, what is it?" "Well," said he, "on the morning before the terrible slaughter took place, after the Duke had ordered his subordinate officers to arrange the line of battle and dispose of the troops according to his direction, he rode along the line and his staff officer met him, and said he, 'Your Excellency, the line is ready; the conflict cannot come on too soon.' The Duke rode up and down the lines, and turning around to his general of staff, he said: 'Is Patrick O'Flaherty here?' 'He is,' said he 'Call Patrick O'Flaherty.' Patrick was called out, and said he, 'I took five steps in advance and bowed and said 'Patrick O'Flaherty is here' 'Then,' said he, 'let the battle go on.'" (Laughter). I was reminded of that anecdote, and when my friend with so much emphasis came to state the creation of all the rest of the territory by the people of Helena, I was struck with its appropriateness to Patrick O'Flaherty's claim Now, I believe in the creative power of men of genius, of energy and enterprise and all that sort of thing, but I do not believe that the battle was won by Patrick O'Flaherty at all, at all, in creating these smaller counties There was a capital here before Helena had assumed the gigantic proportions which it now occupies, located here somewhere about Alder Gulch, I think, when Last Chance was struggling for an existence Yet through their adroit negotiations it was taken from Alder Gulch and moved down to Last Chance, it was always supposed on account of undue influence. Well, now, if there was such influence in the days of its infancy as to take the whole capital and move it by force, what influence may we not expect to be thrown around our legislature when they get here, and I agree with my illustrious friend Luce, who is a patriot and a statesman, that it is not safe to trust young men. It might be safe to trust him or me, but it is not safe to trust young men among such allurements and such surroundings when a convention can be stamped out of their senses almost by the fair sex in the galleries. Now, I am sincere in what I say in regard to the danger of locating the capital too soon I don't know that I have any particular spot for it, unless that, having voted down the beautiful town of Billings, I should bring Miles City to the front—no meager or insignificant town; populated by a people as brave and loyal as ever lived; surrounded by a population known as cow-boys, who never close their hands in time of need But I don't think I shall even drag the name of Miles City before the convention I recollect living many years in Yankton. The capital of the territory was located there for twenty years, and just so long as the capital remained there a curse rested upon the prosperity of that town, and prosperity never dawned upon it until they got rid of that incubus which had been laid upon their necks; and today a half million of dollars would not induce those men to take the capital back and locate it there. Now, so far as injuring Helena is concerned, I do not believe a word of it. I believe that they will forget this little source of bickering and trouble and dissension. It may cause a few pestilential fellows to leave the country, but they will leave for the country's good; they will leave for the city's good, and for the county's good; and if I had my way I would locate it in some beautiful, sequestered place where a man when he got up in the morning to wash himself would not have to go and borrow the water of his neighbor or take it with him when he went to town. (Laughter). Of course we have met here during an unfavorable season. I don't suppose this smoke is always here which we have been compelled to endure while we have been here in this town; I don't suppose the dust is always so deep as it is now; I take it for granted that the saloons will not be, when they get plenty of water, so populous and so densely inhabited as they are at the present time. (Laughter). But I fail to see any advantages in Helena which are not possessed or might not be possessed before the meeting of the next legislature by 15 or 20 other places in this territory. Of course our friends in Helena here have enjoyed the monopoly, as my friend Major Maginnis says, not of money, because it has been a source of expense to them, but of courting political favors, or something of that kind There is a sort of magic in having it here which they are afraid of losing It will pave the way to the United States Senate or to the House of Representatives or to the Supreme Court bench, or to some such exalted position among the powers and principalities of the earth. Now, I shall vote against any proposition which looks to the permanent location of the capital at an early day. I do not say that I shall vote against Anaconda or against Butte—against my friends down town here; and his description reminded me of the city of the New Jerusalem, with everything except the silver pavements. But I will not vote for the permanent location of this capital at an early day, for the reasons which I have assigned.

Mr. Rickards, of Silver Bow: I am sorry that all the remarks that have been made have not been confined to the matters strictly before us. Now, I believe that Judge Luce certainly did answer the argument of Major Maginnis when the Major stood up and said it was not in the province of this constitutional convention to name the temporary capital of Montana. Therefore, I shall not attempt to add anything to what Mr. Luce said on that point. The arguments and the speeches that have been made remind me of the old adage, "He that hath a horn and bloweth it not, the same shall not be blown." And for fear that I may not have another opportune time to blow Butte's horn, I propose now to say a few words, and a very few. Now, Mr. Chairman, I agree with a great deal that has been said in favor of Helena; not what is said in favor of Helena retaining the capital, but in favor of Helena's enterprise. in favor of Helena's wonderful energy—unharnessed and bottled up energy that is yet to be displayed. I agree with all of that. But I am not willing to sit here and admit that Helena is Montana; I am not willing to sit here and admit that Helena is the only place for the capital, I don't believe that others are ready to admit any such proposition. Now, the fact stares us in the face that this constitutional convention is framing a constitution which, as Major Maginnis says, has been thus far gone along with comparatively in a harmonious spirit, but I contend that it will not be a perfect whole until we determine where the temporary location of the capital shall be, and we are all buoyed up and confidently expect that when this convention comes to its sober senses that they will find that Butte is the most eligible and the most acceptable point in the Territory. Butte is a wonderful city. As I said the other day when this proposition was up, a city that is set upon a hill whose light cannot be hid. It is a city that I am sure all Montana is proud of. It is a city that is all that Helena can boast of, and a great deal more. It is a city that has all of the modern appliances and conveniences. We have the best railway system in Montana; we have the best street railway system in Montana; and when the Homestake Pass road is completed we will be nearer to eastern Montana than any other point in Montana that is up for capital honors except Bozeman, and I don't believe that anyone will claim for Bozeman that it is the center of the populous district We do claim for Butte City that it is the center of the present populous district. and we believe it will be so for many years to come. We are not working for the permanent location of the capital at Butte City, but we do desire to work for the temporary location of the capital there, so that when this matter is submitted to the vote of the people, the people shall decide whether Butte City shall be the point for the permanent capital or not We are willing to trust that to the people. Now, I am sorry that Major Maginnis referred to this apple of discord. This discussion thus far has gone on very pleasantly until some member from Lewis & Clarke has risen to his feet and assailed the motives or impugned the motives of every member who may differ with them. I yield to no member upon this floor, not even the eloquent gentleman from Lewis & Clarke, in the motives that actuate every member of this constitutional convention in framing this constitution that is to be submitted to the vote of the people, and I am not willing to sit in my seat and hear those motives impugned, nor am I willing to sit here and have it said that in the discussion of this question we are throwing to others the apple of discord. If the apple of discord has been plucked I have not seen anyone that has plucked it except some representative from Lewis & Clarke County. Now, Mr. Chairman, I do not say this in any spirit of unfairness; I do not say it in any other than a friendly spirit; and if there has been any other spirit than the most kindly, the most chivalrous shown here by any delegation, I have yet to witness it. Now, I hope that when we come to the final settlement of this question—I am sincere in this—I hope you will give Butte City what she asks. She has never had anything from Montana—not a single thing; and she asks now for the temporary location of the capital of Montana there because she believes it is her right; because she believes that in the location of it at that point you will be accommodating the most populous districts of Montana, not alone now, but for many years to come. And I want to reaffirm what I said a while ago; that when the Homestake Pass road is completed you will find that Butte City is the most acceptable point in the Territory for the accommodation of the entire Territory, and more especially for the populous district of the Territory. Butte City's business surpasses that of any other point in Montana; Butte City's business has made possible these lines of railroad that Major Maginnis so eloquently portrayed; Butte City has made possible not only these various lines of railroad, but she maintains them today; and I claim that the citizens of Butte City have been as loyal and as patriotic to the interests of Montana as those of any other city or town in the Territory; and I claim for her that she is as loyal today; and if we don't get what we ask, we will submit as gracefully as our friend from Deer Lodge County. We are willing to contend with you as to the acceptability and eligibility of these various points, but if we shall not get what we ask we will not rise to our feet and say that from any unjust motives or influences you robbed us of our rights. We present our claims, and we hope that when the time comes you will give us what we ask.

Mr. Middleton, of Custer I move that the committee now rise and report progress and ask leave to sit again.

The motion was seconded

The Chair put the question on the said motion and a vote being taken, the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

The Chairman of the Committee of the Whole reported progress and asked leave to sit again.

The President: The Chairman of the Committee of the Whole reports progress, and asks that the committee be extended leave to sit again.

Mr. Callaway, of Madison: I move that the convention take a recess until two o'clock.

The motion was seconded

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

RECESS.

2 o'clock P. M.

The convention was called to order by the President.

The Clerk called the roll

The President: The convention had under consideration a special order in the Committee of the Whole The Chairman of the Committee of the Whole reported progress and asked leave to sit again, which was granted What is the pleasure of the convention?

Mr J. R. Toole, of Deer Lodge: I move that the convention resolve itself into Committee of the Whole for the further consideration of Proposition No. 18.

Mr. Bickford, of Missoula: Before the motion is put, I desire to send to the Clerk's desk a resolution and ask that the same be read in connection with the matter in the newspaper that I send along with it.

The President: The gentleman from Missoula (Mr. Bickford) offers a resolution. Is there any objection to its being read? If there be no objection, it will be read.

The Clerk read as follows: "Whereas the privileges of the floor of this convention have been accorded the Helena Journal with other papers of the Territory for the purpose of reporting the proceedings of the convention. and whereas said privilege has been abused by the said

Helena Journal in that articles have been published in said paper reflecting upon the integrity of certain members of this convention and impugning the motives of certain members in casting their votes, therefore be it resolved that the said Helena Journal be excluded from this hall and its representatives be excluded from the floor of the convention during the remainder of its session; and that the sergeant-at-arms be directed to see that this resolution is enforced.

(Signed)

L. D. HATCH,
C. S. MARSHALL,
JOSEPH E. MARRION,
W. M. BICKFORD,
W. R. RAMSDELL,
W. J. KENNEDY.

The Clerk also read said article referred to as follows:

"FUNNY BUSINESS FROM MISSOULA."

"A trade has been made, but of what nature not a word has been divulged. This delegation acted in what may be termed a meteoric manner on the question of representation in the Senate. It would naturally have been supposed that Missoula would have stood in with Lewis & Clarke, Silver Bow and Deer Lodge on this question, being a big county. The vote of the entire delegation, however, astounded everyone by going solidly with the small counties in favor of the one-county-one-senator principle. Previous to taking this action a caucus of the delegation was held. It was rumored that they had traded their vote for a vote on the capital question. Just what this trade was and how it was worked is difficult to surmise. It is certain that Missoula County did not trade her vote on this matter for those of the small counties on the capital question, as she can have no hope of getting the capital located at Missoula. The true inwardness of the vote will doubtless be learned today."

The President: What is the pleasure of the convention concerning this resolution?

Mr. Bickford, of Missoula: I move the adoption of the resolution.

The motion was seconded.

The Chair stated the motion.

Mr. Maginnis, of Lewis & Clarke. I would be as loath as anybody to impugn the motives or actions of the members of any delegation, or to have them impugned, but I think this ought to go to a special committee to investigate the charge and see if it was maliciously done or for what reasons it was done. I think the gentleman from Missoula would be very glad to have that done. I suggest a special committee of three to investigate the matter, and if that committee report favorably on the resolution there will be nobody in the convention that will more gladly vote on the resolution than myself. Nobody ought to be punished without the form of a trial.

Mr. Bickford, of Missoula: I appreciate the weight of what has been said by the gentleman from Lewis & Clarke, and I also appreciate the fact that it is a serious matter to have the motives of the members of this convention impugned either upon the floor of the convention or in a newspaper of general circulation in the Territory. The members from Missoula County are confronted with the fact that they must go back to their constituents and if their constituents have a knowledge of this publication, that they must stand the brunt of having a falsehood to face, and that they must fight it down. I desire at this time to submit to the convention the fact—and if there is any member of the convention who knows to the contrary, I call upon him to get upon his feet and state it—that the delegation from Missoula County have acted as fair as any delegation within the limits of this hall. We have been neither bought by the expectation of favor nor have we been cowered by the threats of anyone. We are here simply to vote for principles, to maintain that which we consider right, and to stay by any convictions we may have, no matter whether we are persuaded or whether we are threatened. It is true that the Missoula delegation has not always voted as a unit, and this fact I refer to only as showing that we are honest and sincere in our convictions. We have been modest because we come from a county west of the mountains and one that is remote from the rest of the Territory. We do not wish to enforce upon this convention in any unfair way any convictions that we may have. The opportunity may have been presented to us to trade our votes for others, but I say that no open proffer has ever been made by any member of this convention so to do. I can say, standing in my place here upon the floor of this convention that, be it to the credit of this convention, no proffer of any kind has ever been made so far as the capital question is concerned, nor any other matter, so far as that is concerned, and if there has been a vote taken upon the question of representation in the State Senate to be, the vote of the Missoula delegation has been a vote given from purest motives and simply because they believed that that political principle should prevail, that a representative should come from every county in this Territory. We are not here, Mr. President, to be bulldozed by a newspaper, nor are we to be browbeaten by our fellow members. We are here simply to co-operate with the members of this convention for the best interests of the Territory of Montana. I say this without fear of successful contradiction. I say it, and I appeal to our actions upon the floor of this convention as a confirmation of what I say. I simply leave the resolution in the hands of the convention to do with it as they see fit.

Mr. Maginnis, of Lewis & Clarke. I wish to assure my friend from Missoula that I fully concur in all that he has said; and of course it will be as apparent to him as to others that a breach of privilege being committed, the report of an impartial committee of this convention will be a judicial decision in favor of the gentlemen who feel themselves aggrieved. Everyone knows that a newspaper run out in the morning contains a great many things that the editor nor anybody else but the authors of them ever see, and I think the best thing would be to refer the question to the breach of privilege to a committee of three gentlemen.

Mr Cooper, of Gallatin· I move that this resolution be referred to a committee of three, with instructions to report tomorrow morning after the morning roll call.

The motion was seconded

The Chair put the question on the said motion, and a division being called for, the same was declared carried by a vote of 42 in the affirmative to 10 in the negative

The Chair appointed as such committee Messrs. Maginnis of Lewis & Clarke, Knowles of Silver Bow, and Gibson of Cascade.

Mr. Maginnis asked to be excused, and the Chair appointed in his place Mr. Burleigh of Custer.

Mr. J. R Toole, of Deer Lodge, renewed his motion that the convention resolve itself into Committee of the Whole.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken the same was declared carried.

IN COMMITTEE OF THE WHOLE.

Mr. Hershfield, of Lewis & Clarke, in the Chair.

The committee was called to order

Mr. J. K. Toole, of Lewis & Clarke Mr. Chairman, I regret exceedingly that any gentleman of this convention feels that anything has been said or done which would be construed to be an impugnment of his integrity or in any way a reflection upon his conduct in this convention And I desire to disclaim in the outset in anything that I shall have to say, any intention of indulging in anything of that kind or character; and if anything should escape me that would be subject to any such construction, I now make the apology It will either be through the infirmity of my language or the heat of debate. I do not think that any gentleman of this convention may be fairly subject to any such imputation or that there has been cause for anything of the kind. I trust, Mr. Chairman that I may be permitted to indulge the hope that every member of this convention, when the time for adjournment shall have come—and there is ample foundation for the hope—that he may be able to say, as did the distinguished statesman of Kentucky—a gentleman who was the pride and devoted son of that great State—who, when he came to finish up his public career, asked that there might be inscribed upon his tomb these immortal words: "I can appeal," he said, "with unshaken confidence to the Divine Arbiter for the truth of the declaration which I here make, that I have been controlled by no impure motives, have sought no personal aggrandizement, but in all my public acts I have had an eye single and a warm, devoted heart to what in my best judgment I conceived to be the true interests of my country." Now, Mr. President, it is perhaps proper to say in the outset that we ought to conceive—to start with a proper apprehension of what are the duties and obligations imposed upon this convention. Different ideas obtain. At different times during the proceedings of this convention it has been asserted that a constitutional convention is a sovereign body—that it possesses absolute sovereignty, and that it only needs to submit its acts for ratification to the people in order that they may have binding force and effect. Upon the other hand, I maintain, as I maintained upon the adoption of the preamble, that this convention has never sought to act as a political sovereignty, but that what it does is in pursuance of an Enabling Act of the Congress of the United States, supplemented with whatever sovereignty belongs to it. For four years, as the representative of the people of this Territory, independent of politics, upon the floor of the Congress of the United States, in the lobbies and elsewhere, in season and out of season, I have clamored for constitutional government for the people of the State of Montana. I thought then, Mr. Chairman and gentlemen of the convention, that the people of this Territory wanted constitutional government, and that they were demanding that a convention might assemble in the city of Helena for the purpose of adopting a constitution for the proposed State of Montana. I never dreamed, Mr. Chairman, that the object and purpose of it was to move the capital to some other point within the State. It may be, Mr. Chairman, that the right resides in this convention to establish the seat of government; it may be that this convention has the arbitrary power to locate the seat of government. Carrying that idea out of its logical consequences, if it be possessed of this idea of sovereignty, it may go farther and nominate a State ticket from Governor down, place it in this constitution, submit it to the people and say "You shall be compelled to accept the ticket which we nominate, or you will be compelled to defeat this constitution." (Applause) Now, let me ask you, Mr. Chairman and gentlemen of this convention, in all fairness, are you not tieing the hands of the people upon this question, if you consider it of sufficient importance to submit it at all? Are you not tieing the hands of the people and saying, "Gentlemen, you cannot have a fair expression of popular sentiment and popular will upon this question, but if you want to adopt a constitution for the State of Montana you must accept it with some town which we shall designate in it as the temporary seat of government." You are taking away from them the right to say what they will do. Now, this might be very well, and it would be excusable if what was stated by my honorable friend from Gallatin County (Judge Luce) was true. He stated that it was absolutely necessary that we should designate some place in this instrument for the temporary seat of government. He was followed up also by the gentleman from Silver Bow, who always presents everything forcibly and clearly (Mr. Rickards) that that condition of things was true and therefore it becomes necessary to insert the name of some town in this constitution. Let me call the attention of the gentlemen to the fact that by an act of the Legislative Assembly of 1874 provision was made for submitting the question of the location of the seat of government to the people of the Territory of Montana, and by a popular vote it was determined to be at the city of Helena. Thereupon the proclamation of the Governor was made, the law went into force, the seat of government was removed; is here today and has been here since that time. The very last section of the Enabling Act under which this constitution assembled and under which it transacts its business today provides that the laws of the Territory of Montana, not modified by the Enabling Act or this constitution, shall be and remain in full force and effect By that the seat of government—the temporary seat of government of the State of Montana would be at the city of Helena; and I make this observation because when the other day the proposition was up, myself and my colleague, Major Maginnis, voted that there should be nothing said upon this question; that our votes were being misconstrued as a vote against the city of Helena. Now, this is true. If it were not true it would be necessary in this constitution to go farther, if we desire any laws of the Territory to remain in force, and strike out the word "Territory" wherever it appears in the miscellaneous subdivisions, in the criminal subdivisions, in the civil code and in the general law. This was done for the very express purpose of preventing the people in these Territories who are proposing to form States *from entering into* these legal controversies. Why, sir, in that Enabling Act, so far as the Territory of North Dakota was concerned, an express provision is inserted in it, that they shall have a right to submit the question of the temporary location of the seat of government to the people of the State by a separate proposition and an amendment. Allusion is made all the way through the bill to the temporary seats of government, and also to Bismarck in North Dagota. Now, that is true, and it was done for the very purpose, I take it, to prevent these legal controversies. I consider it a laudable ambition upon the part of any town in this Territory to aspire to capital honors. There is nothing wrong about it Helena claims no such superiority as would point it out as the only place in this Territory where the seat of government ought to be. It recognizes that in this Territory towns are growing up—towns of importance—and that the settlement of new communities is constantly changing the centers of population. What we do claim is that when the question is submitted, when the time shall come for the consideration of this question, that it may go to the popular will; that the people, independently of the question of constitutional government, may be permitted to say where it shall be. Now, we may be running upon dangerous ground. I listened the other day to my good friend from Deer Lodge, Judge Whitehill, who stood upon this *floor* time after time and asserted that any proposition which went into this constitution that said the Legislature shall do so and so was a nugatory proposition and a nugatory provision. You propose to locate the temporary seat of government at Anaconda, at Butte, at Bozeman, or elsewhere, and then you follow it up with a provision which says the Legislature shall at its first, its second, or its third session provide for the submission of that proposition to the people. I say my friend has said to you time and again, and he has said that the books are full of it, that you cannot mandamus the *Legislature; you cannot compel them* by any proposition known to the law. There was no method by which the executive department or the judicial department could control the legislative department. Hence, if the provision is put in there and the temporary seat of government is removed, how, I ask you, do you know that it will not remain there for five years, for ten, for fifteen or for twenty. Therefore, it seems to me that it is useless to undertake to interfere with this proposition at a time when it is admitted by everybody that the permanent seat of government should not yet be located. It therefore seems proper to me that the temporary seat of government should remain just exactly where it is without any interference upon the part of the convention, and that the Legislative Assembly when it meets at its first, second, third, fifth or sixth session, or whenever public sentiment may demand it, may be in a situation unrestrained by constitutional provisions from putting it into operation. Now, sir, the constitution which we are adopting is an instrument, I take it, in which not only every member of this convention, but every citizen of this Territory, ought to feel a pride. This is no place for this sort of question If it was in the Legislative Assembly, I would not only think it entirely proper, but I would expect of every locality in this Territory that thought that they were the proper place for the seat of government to urge their claims in the best manner possible But in the constitution it was designed that it should contain only fundamental law. Expediency, policy, the mere question as to where a thing should be today or tomorrow—no such proposition as that was ever designed to be inserted in the fundamental instrument of any State of the Union. Shall we put *into this constitution mere matters of expediency?* Certainly not, only the fundamental law; and I think that declaration has been assented to a hundred times upon this floor since this convention met. Now, Mr. Chairman, I do not think it can be maintained here, so far as the mere question of sovereignty is concerned, that this convention has a right to do anything that it pleases arbitrarily. It ought to be done with circumspection; it ought to be done with discretion. If that is not the case, what is there but the mere sense of justice upon the part of this convention to prevent it from running riot as did the thirty tyrants of Athens Nothing but the mere sense of propriety on the part of this convention would guide and control it. This convention provides that certain things shall go into this constitution, and it seems to me that we will lose nothing of our character, integrity or ambition if we confine ourselves as closely to it as we may; so that in the end, Mr.

Chairman, we may have a constitution which shall contain only fundamental law; a constitution which may last in all its vigor unimpaired until our resources, until our wealth and our prosperity shall demand a still greater enlargement of our liberties. (Applause)

Mr. Dixon, of Silver Bow: I had not intended to have intruded upon the convention any remarks of my own in reference to this matter, but as it seems to have taken a turn wherein not the interests of the localities is involved, but the greater question of constitutional law. I have a desire to say a few words upon the subject. Here is an Act of Congress authorizing us to assemble for the purpose of forming a State constitution Under that we have the undoubted right to make provisions to protect the life, the liberties and the dearest interests of every citizen of the proposed State of Montana. But it seems, according to the arguments of gentlemen that have been made here to you, that when it comes to the very vital and important question of this convention saying where the temporary seat of government shall be, that that is a matter over which this convention has no jurisdiction whatever. Why, one of my honorable friends from Lewis & Clarke says that he does not think that Congress ever had any idea that anybody would undertake to remove the capital. Now, with all due respect to its importance, to its high standing among the great commercial and financial centers of the world, permit me to suggest that Congress would perhaps so far forget its duty that the town of Helena never entered its mind.

Mr. Maginnis, of Lewis & Clarke: The gentleman, I am sure, does not want to misrepresent me. My point was that this Enabling Act of Congress authorized any of these conventions to take this matter into consideration.

Mr. Dixon, of Silver Bow: I say in reply to that that it seems very singular to me that the question of authorizing the admission of any of the new States, should have any concern or interest in whatever the conventions might do in such an unimportant and simply local matter as the changing of the seat of government. As I said before, we may pass unquestioned here propositions relating to the most vital interests of the community, and yet when it comes to the question of whether or not the capital shall be removed, on that our mouths are stopped by the Organic Law. Now, I claim that this convention has full power not only to regulate that matter—a matter comparatively unimportant among matters of so much more moment—but I claim that if it chooses to exercise that power, it has undoubted right to do so. The gentleman who last addressed you said this would be taking an unfair advantage of the people. I say not. If we take no action in this matter, and that is what the gentlemen want—they do not want anything done—then under the law the temporary seat of government would remain where it is. But they say we are taking an unfair advantage. Suppose we leave the seat of government at the city of Helena, does not that comprehend quite as much as if we were to provide for removing it somewhere else? I believe this whole matter is purely within the discretion of the convention. This constitution is to be voted upon. We are not the final judges whether it shall be the controlling law of the land or not It is to be submitted to the people, and we have just as much right, if we believe it is expedient and fit to do so, to act upon this question as upon any other, and I hope the gentlemen of the convention will not be deterred from taking such action as their judgment may dictate, by the idea that there is a great constitutional question involved here, and that among the multiplicity of powers, one was reserved, and that you must protect the rights of the city of Helena. It is presumptuous, it is absurd, to talk about removing the capital. When you come to touch the interests of Helena, you must be still, you must say nothing; take off thy shoes from off thy feet, for the ground whereon thou standest is holy ground. (Laughter and applause) Now, I do not consider this a very vital matter. There are a great many things that we have considered in this constitution of infinitely more importance to the people of this Territory than where the temporary capital may be located; but I do say that we have a perfect right to consider it, and I think we ought to do so; and if it is the sense of this convention that some other place, some other point than Helena is entitled to whatever advantages there may be in the temporary seat of government, I think it is perfectly right and proper that this convention should take action in regard to the matter. Now, so far as the Silver Bow delegation is concerned, I believe that I represent them in saying that they desire, as is natural and right, the removal of the temporary seat of government to Butte, but they do not stand exactly in the position that seems to be assumed by some of the representatives of Lewis & Clarke County. In Butte we have a large and flourishing mining camp We take pride in the wealth, the resources and the business and the industries of our town, but we do not claim to own the Territory of Montana. We do not claim that we built up Custer County, we do not claim that there is no place in the Territory but what was built up by Butte capital, and therefore ought to be tributary to Butte whenever it comes to the question of the interests of Butte. We admit the right of every portion of the country, of every place in the State to put in its claim for the location of the temporary seat of government. Whatever enterrpises have been established, whatever industries have been founded there, they have been founded for the benefit of those who went into them, and while those industries have had their effect, all over the Territory, I may say, in the increase of business, we do not claim that we went into them for the benefit of the outside counties, nor do we claim that we have any lien upon the outside counties, by which they should vote for Butte for the temporary seat of government. We stand only upon our own rights, and upon our own claims, not derogating from those of other people, nor assuming that it is sacrilegious for anybody else to claim anything as against Butte, not thinking that it is presumptuous for anybody else to think they have a good town, but only presenting our claims, and asking for them a fair consideration. If this matter is put upon the ground of the considerations which have been advanced here in favor of Helena, I do not know of one of them that might not apply with equal force to Butte. As a center of population, it certainly has as many advantages as this place; in fact, I know of no argument in favor of Helena that would not apply to the location of the capital in Butte. But, as I said before, we stand upon our merits, claiming a fair consideration, but without any attempt or any desire to arrogate to ourselves any superior claim, except so far as it is founded upon right and justice to that of any other community in the country. And so far as this matter of stirring up strife in this convention is concerned, so far as casting into the ring the apple of discord, and stirring up feeling and all that, why, I have seen no evidence of it, except that which came from some of the gentlemen who have addressed you upon this floor in reference to the retention of the capital Now, this is not a matter about which I see any occasion for feeling, or for which I see any occasion for any discord Why, the world will not go to pieces if the capital is removed from Helena, nor Helena will not go to pieces either I have a great respect for the city of Helena. I admire the perseverance and persistence and the unanimity with which its people stand together in everything that relates to it. I am proud of the place as a city of Montana, and I admit that it has all the virtues in the calendar, except one—now somewhat gone out of date, but still entitled to be considered occasionally—the virtue of modesty. (Laughter and applause) However, I am not willing to admit everything that is claimed for it, nor am I willing to admit that there are any such superior rights existing in Helena as to make it presumptuous upon the part of any other place to fairly present its claims for the seat of government, and to have those claims acted upon As I said before, I see no feeling or trouble or discord here Let us go on and discuss this matter. Let us consider what is best to be done. Let each member vote according to his convictions, and when we are through let that be the end of it. So far as Butte is concerned, I am satisfied I can say for its delegation that if its claims are defeated, there will be no demonstrations of recalcitration on its part. We will accept the verdict of this convention, and I think I represent the sentiment of the majority that if we cannot get it in our own place, we shall exercise the privilege of voting for it in the next place that we believe should have it, and we shall do all this good-naturedly. We shall advance no claim of superior rights against any other place. If we are beaten, we shall give up, making the best of what we can, and there shall be no further feeling about the matter. I do not understand why there should be any feeling. Why, if Helena has all the advantages of the future before it, and the present prosperity which it has, and which I believe it will always have, it seems to me that there should be no feeling about this matter. I do not know how you are situated here in Helena with reference to the location of the capital; we have got along in Butte without it; whatever advantages there are in it, Helena has had them for a good while, and as I said before, while I do not desire to go into this discussion at any greater length, I want to state what I believe is the position and the feeling of the majority of the Silver Bow delegation, that we have got a perfect right to consider this matter if we choose, and that there is nothing about it, which will prevent us, if we desire to do so, from voting to take the capital away from Helena, however treasonable it may seem in the eyes of some people who live in this particular place. Upon that principle we propose to act, good naturedly, without feeling, and without making any accusations; but we certainly do not intend to be bluffed off from discussing this question, or trying to get a vote of the convention upon it, by reason of any want of power in the convention to regulate the matter if it see fit to do so.

Mr. Whitehill, of Deer Lodge: I do not propose to repeat or rehash any of the arguments which have been presented here at all. My friend from Bozeman has fully answered the arguments in regard to the power of this convention to settle this question as to the location of the capital. And I would simply say that I do and have argued here that any such provision put into the constitution, as says that the Legislature shall do so and so, is nugatory. But sometimes there is a power in the indignation of the public, in the arousing of public sentiment, which will do things that courts cannot do, and let any aspirant after public office attempt to make nugatory any act of this convention, and I say here that he will be hurled forever into utter oblivion by the indignation of these people. Now, there is but a single thought, Mr. President, that I wish to present here, and that is this: Threats have been made, and with very great effect because gentlemen have said to me, "Whitehill, if this thing is pressed, we fear very much that the constitution will be defeated." Is not that a great idea for any gentleman who is in this convention to argue or attempt to substantiate—the idea that if we do not leave the capital at Helena, that this constitution which we propose to present to the people will not be ratified? Now, Mr. Chairman, no matter what this convention in its good wisdom may decide to do, whether it shall allow the capitol to remain here, or whether it shall say that it shall go to some other town—no matter what, if this convention has decided, the good people of this beautiful city may decide to do in that respect, no matter what the people of our sister city of Butte may decide to do, no matter what Bozeman, Billings, or any other town or hamlet in this blessed State may decide to do—I tell you that on the first day of October, in spite of storm or tempest roar, in spite of false and foolish lies, I assure you, the good people of Anaconda will come up with smiling faces, and give a solid vote for the ratification of this constitution, which we may present to them. And I tell you that in spite of the slurs which have been cast upon us, in spite of the insinuations which have been hurled at us, I tell you that the good people of Anaconda are not spiteful. (Applause)

Mr. Knowles of Silver Bow. I have no desire to discuss this question, but propositions have been presented, and assertions have been made, that have compelled me to take my part in this discussion. The question of sovereignty in this convention has been touched upon This convention, as I have asserted before, assembled to form a constitution by virtue of the sovereign right of the people they represent. The Congress of the United States had no power to form a state government. A state government is formed by the sovereign power reposed in the people within the limits of a certain locality, and they organize their government and they come to the door of Congress and say, we wish to be admitted into the family of states with the constitution that we have; and the only limit upon that is that it shall be republican in form. As to the question of this temporary location of the capitol, why, we have got a right to say where the legislative assembly or the legislative power that we create shall meet. We created that power. We, the people of Montana delegate to that legislature its power, and we limit its power, and we cannot say where it shall assemble? If we cannot, it seems that we are cut very short; that while we can provide for a legislature, and give it a right to legislate, upon all rightful subjects of legislation, that we cannot say where that legislature should meet. I do not claim that this convention is over and above all law. It meets here in pursuance of an Act of Congress, to form a constitution. The constitution of the United States provided for a permanent capitol; they have provided in that constitution where a permanent capitol should be, ten miles square, that should be under the absolute control of the United States. In the law we created the Constitutional Convention, we created the Constitution of the United States, and submitted it to the people, there was no authority upon this subject of the location of the capitol. The temporary capitol of the Confederated States was then I believe at Philadelphia, but they provided afterwards in that constitution for establishing a permanent capitol, and there was no provision of that Congress that gave them any such power. The fact is that the law under which the convention wrote the Constitution of the United States, and enacted it, did not provide for any such constitution as that convention adopted. Then we come down to another point in it. The gentlemen say, Why we will leave things just as they are, and yet this Enabling Act provides that the laws of the territory shall remain in force; (reading) "and all laws in force made by said territory at the time of the admission in the United States, shall be in force in said state, except as modified or changed by this Act, or by the constitution of the state respectively." Now there is a special grant given by this Enabling Act that they can change these laws. They say "remain in force, except as modified or changed by this Act or by the constitutions of the states respectively." These states when we can create, can modify the law and change the law, and yet the gentlemen say that in respect to all matter, you can change these laws upon any question, except one, and that the capitol question.

(Here Mr. J. K. Toole of Lewis & Clarke interrupted the speaker in a few words, which were not distinguishable at the reporter's table).

Mr. Knowles of Silver Bow: Yes, but that does not refer either to the laws that should be enforced or the fundamental law, it refers to the laws that shall be on the statute books and there is a special law that those laws that are on the statute books, we may change. But if that was not there, then you have got a law upon your statute books that says that the capitol for the territory of Montana shall be at Helena—not the temporary capitol, gentlemen not the temporary capitol, Mr Chairman—but the capitol of Montana Territory. And if we adopt those laws, we would adopt that as the capitol of Montana Territory. Now, in the report of a committee of which I am Chairman, that will be made in a day or two, as soon as this convention proceeds a little further, there will be a provision that wherever "territory" or "Territory of Montana" occurs in the Laws of Montana that they shall be read "state" or "State of Montana" to make it applicable to state government. Now, apply this to the location of the capitol that is now located in Helena, and you have "the capitol shall be at Helena"—the capitol of the state. Just look at it there. That is the capitol of the state and that will be the way that the law will read—not the temporary capitol, but the capitol of the state. These gentlemen are lawyers enough to know that that will be the effect of enacting that schedule. Do we want to leave out such a provision as that. Do we want to go into a state organization wherever "territory" occurs, leaving it still in there—that prosecution shall be made in the name of the territory, that certain things shall be done by the territory, do we want to leave that there? No, we want to change these laws and make them apply to the state, and that is what we are doing here by legislating When we adopt that schedule we will legislate upon that subject. That is enacting law by this conevntion; and upon that matter, if you leave this matter without saying anything about this temporary government. I believe that as you have adopted a state government here, and say nothing upon the subject of a capitol, that the courts themselves. would be compelled to construe the law as you would provide in this schedule, and say that wherever "territory" occurred it meant "state," and wherever "Territory of Montana" occurred it meant "State of Montana" They would have to do that; they would have to say that it had been modified by enacting this state government. Now, gentlemen here seem to think and argue as though this was only a continuation of a sort of a territorial government. It never has been fully decided yet as to what a territorial government is. One thing that seems to be clearly decided about a territory is that it has not any rights that courts are bound to respect—that no matter what laws it enacts that the courts of the United States can repeal them. That it has no sovereignty at all. That was the argument that was made for

Kansas by Senator Douglas that there is a sovereignty in the people that never has been granted to the national government and that by virtue of this sovereignty that was in the people, they had a right to enact these local laws that were called derisively "squatter sovereignty." But the Supreme Court of the United States in the Dred Scott decision, denied that; and where we are and what we are it is difficult to tell from the decisions. But I do say, gentlemen, that whatever it is, that this state government is something that is different from a territorial government. It is upon a different basis; it has a different status. It is a state—and not a simple municipal corporation or a simple thing that is created by the will of Congress. It is something that is created by the people. It is a state created by the people in their sovereign capacity; and when you come down to that, this government is not simply a continuation of the territorial government, only modified by a constitution—it is a new government, an entire revolution. New rights, new officers and everything that pertains to this state government will be different from a territorial government; and we have to adopt all these schedules and these amendments in the laws so as to make them applicable to the state government, and we do it in our constitution that we adopt. There has been a good deal said as to the enterprise of Helena, and the propriety of the question of leaving this capitol here Whatever is the propriety of leaving the capitol here, I trust there will be a provision in this constitution that will only make Helena the temporary capital, if the capitol remains here. But then as to the question of propriety The gentleman has spoken of the enterprising citizens of Helena. I grant that they are enterprising. They have citizens in Helena that I have wished lived in the communities where I live; they have had push and energy and public spirit and a patriotism in their town such as has never been witnessed anywhere else in Montana What citizens of other communities in Montana Territory have had the loyalty towards their town that the citizens of Hèlena have had? They have built up here under the most discouraging circumstances a splendid city. But, gentlemen, they have not done everything for Montana, and there has been a good deal that has been charged against them of selfishness in their enterprise There is a good deal of that that is true. The gentlemen may say that they have done this and that for their county, but they have not done it in the spirit of generosity. The gentlemen say "Why, you have the Insane Asylum in Deer Lodge County." We have not the Insane Asylum in Deer Lodge County. There is no Insane Asylum located there There are a couple of respectable gentlemen members of the medical fraternity that, under a contract with the Territory of Montana, took care of its insane at so much per head. They could as well have taken those insane to Boulder as they could to the Warm Springs. They could take them to Bozeman today as well as leave them where they are. They are simply contractors to keep and board these men for so much money. There is no location of the Insane Asylum there. There has been some desire to locate the Insane Asylum at Warm Springs, and purchase that property as it is so well adapted to that purpose. But how has Helena felt upon that subject? It has been felt by a good many of our legislative assembly that Helena was not favorable for a permanent location of the Insane Asylum even for the territory, because Helena might want that institution itself. Then they say that they have in Deer Lodge County the Penitentiary. Yes; a good many years ago the Penitentiary was located in Deer Lodge County. After a few years it was filled. They were in such a condition that every United States Grand Jury for ten or twelve, and I do not know but fifteen years, reported that the Penitentiary was in a bad condition and asked to have something done with it; and not until the time arrived when the courts had to provide by order that the penitentiary convicts should be confined in the local jail on account of that penitentiary being so filled up, could there be found anything to be done to enlarge that penitentiary; and it was charged by a good many citizens of Deer Lodge that there was a local feeling upon that subject in this town of Helena, and that was the reason the penitentiary was not enlarged.

Mr. Maginnis of Lewis & Clarke: Did you ever believe that, Judge?

Mr. Knowles of Silver Bow: I never knew why it could not be enlarged, because I knew that when it was enlarged, although it was the property of the United States, it was taken out of the pockets of the taxpayers of Montana Territory—a part of the internal revenue of Montana

Territory that was collected in this territory in violation of the great fundamental principle that there should be no taxation without representation Part of the forty thousand dollars, less than half of the revenue derived from Montana Territory for one year, was at one time put in that penitentiary. The gentlemen say that they have built railroads—the Helena people have—in their communities, they have built a railroad to Philipsburg. Why, were there not other parties associated with the few Helena gentlemen that built the railroad to Philipsburg? Were there not some West Side capitalists that helped build that road and really put the largest amount of capital in that enterprise—and the railroad, too, up the Bitter Root Valley? Why, these gentlemen were associated with other gentlemen in Montana Territory who had not lived in Helena, all building that as a business enterprise for the money that could be made out of building it; and yet the gentlemen from Helena can brag about these things that have been done by gentlemen of business enterprise from other portions of the territory associated with them. Why, it is these things, gentlemen, that lead us to say that there is considerable of selfishness in Helena—that there is a considerable disposition to aggrandize the people of Helena. Why, to off-set the penitentiary of Deer Lodge, that has been a kind of nuisance over there, you have the United States Assay Office located at Helena and that has been a good deal better provided for and cared for than the Penitentiary of Deer Lodge. Why, the bullion that was shipped from the Hope Mining Company in Deer Lodge County and from other places, that we sent here were reported as the product of this community because they went through this assay office What stopped the mining men from Deer Lodge from sending their bullion to be assayed at this office. It was because Helena claimed it as part of their product. I know that the gentlemen talk about that, and there are gentlemen here that know more about that matter than I do And there was a time, I remember years ago, when Deer Lodge was an aspirant for capital honors—only forty miles from Helena—and at that time Deer Lodge County had sixty mine camps, placer mining camps—and was turning out more than one-half of the gold product of the territory, and Helena claimed that it was friendly to that proposition, and the gentleman at that time—the distinguished and honorable gentleman—was running for Congress, and they came over there from Helena and said "Why, you support our man for Congress and we will support Deer Lodge for the capital And there were some fifty or sixty votes obtained at that time against a citizen of Deer Lodge upon that play, and when the time came around they got twenty-eight votes in Lewis & Clark County for Deer Lodge for capital Why was it? Because Helena was an aspirant and it wanted to put its foot on any other aspirant but itself. The gentleman has stated that a certain Helena man started the town of Miles City "Why," said he, "a gentleman of Helena built the first house in Miles City, our grand Mr. Matt Carroll" Well, Mr. Matt Carroll, if I remember correctly, about that time was a contractor for the government of the United States in furnishing transportation and supplies to the Fort, and I have wondered whether or not the fact that part of that reservation was cut off so that Matt Carroll could put his house there, was not because he was a Helena man (Laughter). Now, in relation to the town in which I live—Butte—they have got a notion that they want the capital over there, and we from that section will support that place for the capital The gentlemen here may seem surprised, or may feign surprise, that Butte should not be disposed to stand in with its thriving sister upon the other side of the mountain; but there is a feeling in Butte that Helena has not always been just. In talking about the railroads that were to be built, one that was manipulated under Helena hands was to go from the Three Forks up the Boulder over here and run really further north than Butte, and they made a detour and came around to Butte on a one hundred and fifty feet grade to the mile a distance of one hundred and three miles long, when there was a cut and practical route thirty-four miles nearer and much more easily constructed; and when it was claimed by the people of that community that there was a cut and practical route, the friends of this community said that we were misrepresenting that fact, that we had no pass there; and one of the engineers of the Northern Pacific Railroad told me that in the Pipestone Pass there were twenty-seven miles of one hundred and twenty-one feet grade, and when he agreed with me as to the elevations between the Three Forks and the Pipestone Pass I showed him that at Three Forks he would be over three hundred and fifty feet under ground; and then he turned around and said he was mistaken as to it being on that side, but that it was sixteen miles on the Butte side, and when we agreed on the elevations I showed him that thirteen miles and a half from the Pipestone Pass he would be a thousand feet under ground. Now, how did it happen that a man whose business was engineering should have such a mistaken notion about the pass that had been so much talked about as that? I say to these gentlemen here that those people on our side of the range have felt that this community in its selfishness had misrepresented them somewhat in these matters. The gentleman spoke about distinguished visitors—Senatorial visitors here—who advised him upon constitutional law. I notice those gentlemen were here and they went up to Marysville to see the mines of Montana Territory. They were the guests of citizens of Helena but they did not come to Butte. And there were a couple of distinguished gentlemen who went to Anaconda the other day.

Mr. Maginnis of Lewis & Clarke: If they did not go to Butte it was not because we did not urge them.

Mr. Knowles of Silver Bow: Well, I know they went to Marysville and they did not come to Butte I know they could see more of the different kinds of mining in Butte in one day than they can see in all the rest of Montana in a month.

Mr. Maginnis of Lewis & Clarke: That is what we told them.

Mr. Knowles of Silver Bow: I will say this of Major Maginnis, that while he has been a local patriot to Helena he has been a generous and noble friend of Montana. (Applause). What is said here about officiating here and getting Jay Gould to build a railroad to Butte, I do know something about that. I know what the proposition was at that time, that while it was to be built within six miles of Butte it was to be built to Helena; and Montana was to exempt it through taxation for ten years. That is the time that we started in sometime before upon the railroad question to agree at Deer Lodge that there should be a million dollars of subsidy given to the railroad, and we thought then that the railroad was to be built to Three Forks at Gaffney's on the Jefferson River or about the junction of the Big Hole and the Beaverhead, why we found out that that railroad was projected to go up by Henry's Lake and down across over this way to Helena and was not to strike another town in its round through Montana Territory. We might go back into a good many things of that kind—and the gentlemen when the time at last came and they could not get any railroad in that direction—although I believe at that time the Union Pacific Company thought there was more profit to be made in building a railroad up within forty miles of the Geysers than there was to build one up into Montana Territory—they finally got freight enough as they came along into Butte to build their road. But it is fair to say of Major Maginnis that while he was first a Helena man that next he was a Montanan, and anything that he could do to make Montana prosperous he was in for it. He was willing to work early and late upon that subject. I grant to him that meed of praise—and I only say these things because the gentleman has spoken of the great generosity of Helena. Now, Helena men have worked for their localities, worked to build their localities. I deny here now that Helena without a selfish purpose ever worked for any other locality in Montana Territory.

Mr. Maginnis of Lewis & Clarke: I do not believe, Judge Knowles, that any man ever worked without some selfish purpose. It is human nature.

Mr. Knowles of Silver Bow: I am with you there to some extent, but I must say that there was a great deal more of human nature in the Helena people than there is in the general run of people. Now then, we are going into a state government, and I think we might as well wipe out the history of the past, all our past struggles and have a clean slate. Helena has not any more right to this capitol than any other place in Montana Territory—not a bit. It belongs to the people to say what they will do upon that matter, and really it was a matter for mirth in the Butte delegation who had not much feeling on this capital question a week ago Saturday, to meet gentlemen who talked about us stealing the capitol and all sorts of things of that kind, as though it was the personal property of Helena that was carried around in their vest pockets and that anybody else who took it was stealing. Now, we did not feel that way about it, because we did not care one way or another about the capital question; but now that it has come about that our own locality is for the capitol, we shall stand by them, and when we find that we cannot obtain it we shall feel at liberty to vote for any other place that we see fit, and we shall not feel that we are stealing the capitol from Helena; and when we have got through with this thing I hope that the Helena people wont be like a child that cannot have its own way and then say we wont play "State" at all any more; we will just vote against your constitution; we will spend one hundred thousand dollars to defeat your constitution if you do not let us have the capitol." Why, when you have got yourself into that state of mind it is time the capitol was taken away temporarily for a little while, and let you understand that you do not own the capitol —that it belongs to the people, and that we represent the people of Montana here in this convention.

Mr. Middleton of Custer: I have listened with considerable degree of interest to the discussion of this matter of the capitol Coming from a part of the territory that is not at the present time making an effort to have the capitol located there, I believe I have been able to look upon the matter with somewhat of a feeling of disinterestedness; but it seems to me the way the matter is working, this convention is resolving itself into a free-for-all race, in which already the cities of Helena, Butte, Anaconda, Great Falls, Bozeman and other places have been entered; and I do not know before we get through but that there will be fifty others and instead of placing the matter in the light of what is best for the interests of the State of Montana—what the people want as to where the capitol is to be located it is resolving itself into a local fight either from local pride or else from the hope of material gain by reason of having a capitol located in some one of these respective cities. Now, it occurs to me that the matter resolves itself right down to this. Do the necessities of the territory of Montana at the present time demand the removal of the capitol or is it not the part of wisdom to let it stay where it is until by a vote of the people, as provided in the rest of this article, it is determined where it shall be permanently located. (Applause in the galleries). Helena has no rival claim to the capitol so far as the capital of the state is concerned. It is true she has possession of it now, but possession of it does not give her ownership, and the mere evidence of possession is not a valid title. What claim has Anaconda to the capitol? She presents her representatives here, coming from a nice little city of six or seven thousand people They have the largest smelting works on the face of the earth there; they have an elegant new hotel, and have a nice little city started. Butte City comes in as a competitor. What claim does she lay for it? The question is are we going to consider the separate claims of these different cities for the capitol, or shall we consider what are and should be the best interests of the State of Montana? Let the capital stay where it is, and where the people vote upon this question they will determine where the permanent capitol should go. (Applause in the galleries) It seems to me like a waste of time that we should quibble over this matter a whole day and probably two or three days before we get through with it. It is simply because persons representing certain localities have some little pique or jealous feeling against the city of Helena. So far as I am personally concerned I talked upon another subject the other day, and did assert upon the floor of this convention that in my judgment the people of Helena had shown themselves selfish to their interests and industries outside of this county, and for that reason I believe it would be as fair to place the thirteen counties of this state in a position where they should have a representation equal to that of the three others, rather than to allow the three to control for all time the thirteen. But does that question arise? Does it matter to us from the fact of the capital being located in Helena, whether the people here are selfish or not? Does it seem like good judgment and good sense to say here, because we have some little pique or quarrel with the city of Helena that we will remove the capital temporarily over to Butte for two or three or four years, or to Anaconda, or over perhaps to the Great Falls of the Missouri? It was a matter that certainly was not made an issue in electing delegates to this convention. So far as my knowledge goes it was not mentioned in the county from which I came, and I am unable to stand on this floor and tell how any single person in my county would vote upon the subject if the matter was submitted to them today. I do not believe that Custer County or Yellowstone County or any other county, for the best interests of the territory, demands that this thing shall be placed upon wheels and dragged over to Anaconda or to Butte or anywhere else. I do not care anything about the claims of Helena. It has no better right or claim than any other city has, but I do care what appears to me to be the best interests of the State of Montana, and I do not think it is the part of wisdom to lumber up the constitution with any provision of this kind. It seems to me the motion of Major Maginnis should prevail, that that part of that section be stricken out. It has been suggested by the gentleman from Silver Bow, Judge Knowles, that if you strike that out it permanently locates the capital in Helena. I will leave it to any other lawyer who will read the rest of the article if that is a fact. It does nothing of the kind. The whole article provides as to how the matter shall be submitted to the people, and there shall not be a permanent location until the majority of all the people have determined upon one location. The argument that has been made here today, or the major part of it, simply relates to what the city of Helena has—what inducements it can hold out why the capitol should stay here. We hear the same kind of thing from Anaconda. They come here with a promise to furnish free of charge rooms, and baths I suppose (laughter), and all that sort of thing for the legislature. Butte will come over here I presume with the same thing; it has not been entirely heard from yet I was not here a week ago Saturday and did not hear what my friend, Mr. Collins, had to say about the matter, but I presume they have good inducements to hold out at Great Falls for the legislature and the state officers to go over there But are those reasons that we should consider as statesmen here as to the temporary location of the capitol? Is there any reason why it should be changed? Is there any demand on the part of the people for an immediate change? If not what is the sense in it, and what is it but a waste of time? Men appear upon this floor here and talk for an hour telling what their city is and what they have and what they have been doing and what they are going to do, and what a nice place it would be for the capital. We people down in the eastern part of the territory do not give the snap of the finger for anything of the kind. The question is, when it is permanently located let it be where it will be the most convenient for all the people, let it be located somewhere where it can be constructed, where material can be had readily. There are a thousand and one things that may enter into the consideration as to the best place to locate it, but I do not think that any of the inducements that have been held out today are reasons or arguments at all in favor of locating it anywhere or leaving it in the city of Helena; but what I do say is, that it is good enough for the present and until the people have by their votes determined where it shall be located permanently, to let it stay where it is. (Applause).

Mr. Gibson of Cascade: I am in favor of settling this question of the temporary capital here and now, and I am ready to vote upon the question. When it is presented I shall vote in favor of Helena. (Applause in the galleries). I shall do it because I consider under the present facilities for traveling, under the present railway system of the state, that the city of Helena is the best place for it. (Applause in the galleries). And I consider that Helena will be the best place for it until the center of population has materially changed. I hardly believe that there is a man on this floor that will not say in his own mind candidly, if this question is submitted to him that Helena is today centrally located in the Territory of Montana. I can see no good in attempting to remove the capital from this place at this time. The time may come, and if the question is determined according to the report of the committee, the time may be then, five or six years hence when it will be expedient to change the capital from this place. Possibly it may be so, but I sincerely believe that if the time ever comes for changing the capital from Helena to another place it will not be over the range of the Rockies, but on the contrary, that the popular voice of the state will demand its location over the Belt range of mountains. I do not believe that gentlemen in this convention appreciate the resources of that country from the other side of the Belt range of mountains. It is a vast country. It is capable of supporting an immense population. It has one of the most extensive mining districts on the face of the earth—I refer to the Little Belt range of mountains. That country abounds in coal for a distance of one hundred miles along the Belt Range of the mountains, and its coal unsurpassed in the western country. It is full of iron. It has agricultural districts more extensive than any other part of Montana, and for that reason it is capable of supporting an immense population. It has water power. It is in the center of the best stock ranches of Montana, and in my judgment it has all the material resources to make this country the other side of the Belt range of mountains a great empire. Now, I believe in putting this time off six or eight years, and then when the center of population is more clearly determined, we can define where the temporary capital shall be. But at present I am decidedly in favor of leaving the capital here at Helena. ((Applause in the galleries).

Mr. Clark of Silver Bow. I desire to have the indulgence of the Chair and of the gentlemen of this committee for a few brief remarks upon this subject It has been stated that this is a sort of free-for-all race, and it seems to be so, and I am glad that it is so. If I understand the proposition before this committee, it is upon the amendment offered by the gentleman from Cascade to change the time at which this question of fixing the capital permanently shall be submitted to the people of Montana, and I believe if I am not mistaken that that amendment comprehends a period of about four years or at the second meeting of the legislature after the adoption of this constitution. I believe if I am not mistaken it is intended to amend this section as it has been amended, that this question shall be submitted at the first regular session of the legislature after the adoption of the constitution, and while the gentlemen have wandered off from this subject and have been discussing the respective merits of the several counties of this territory for capital honors, I wish to say a word with reference to the main question, and I may wander off myself before I get through with my few remarks. I am opposed to the postponement of this question any longer than may be practicable. It has been discussed here as to whether this conention has the powers, upon legal grounds, to change this capital. That I believe has been pretty fully considered, and it is generally believed that it has the power to change it temporarily. Now, if this be the case it may be a misfortune, although I see nothing about this change of the capital or the removing of the capital that has any insurmountable difficulty about it—we have no state buildings: there is nothing to permanently bind down this capital at any particular point, and it is a matter of very easy consequence to move it from one section of the country to the other under the present condiiton of things. Now, this being the case, I am in favor of submitting the question to the people of this territory whose sovereign right it is to say where the capital shall be placed permanently, this being the fact, the quicker we submit that question to the people of the territory and let them exercise their sovereign will upon this subject the better. (Applause). Now, I am in favor of submitting this question at the first meeting of the legislature after this constitution shall have been adopted, for another reason, if as the gentleman has suggested, the capitol of the state is going to travel upon wheels, the meeting of the legislature and the residences of the state officers will be disadvantageous in some places which probably would not present such advantages as a temporary capital as might or would be advantageous in considering the permanent location of the capitol. There can be no good reasons urged, in my opinion, why the capitol of the state should not be fixed at as early a date as possible on financial grounds. It is easy to arrive at a probable center if this be a question to be considered—a center of population that will be obtained probably for a great number of years to come. If it be contended that this state is not able to fix the permanent capital and establish its state buildings, I would say to you that we have a rich commonwealth, a great state, with over one hundred millions of capital, and if it progress at the same rate that has characterized its progress in the last few years we may look forward towards the establishment of this capital in the most limited time that may seem desirable. We may look at least for a doubling of the wealth of the state, and this cannot be considered an objection to fixing the capital and establishing the state buildings, whenever the sovereign will of the people of Montana shall determine that question. Now, I listened with a great deal of pleasure to the speeches of the gentlemen from the various localities of Montana, and I admire the loyalty and the devotion and I may say the patriotism of those gentlemen in describing the merits and advantages of their respective localities. I recall to my mind the speech of the gentleman from Lewis & Clarke who depicted in glowing and eloquent language the advantages of the city of Helena It is a notorious fact that the people of the city of Helena are known all over this country as among the most enterprising, liberal and energetic people to be found in all the western country or any other part of the United States. (Applause in the galleries). I have no feeling but kindness for the people of Helena. I commend their enterprise and their energy and their liberality and a great many things, as is instanced here by the money that was raised a day or two ago for a stricken sister city. Now, I concur with the gentleman, my learned friend from Bozeman, with regard to the advantages of Bozeman and the great potatoes that may be grown there. I concur with the gentleman from Deer Lodge with regard to the advantages that his city of Anaconda presents. They are an enterprising people. They have built up there the most gigantic plant for the reduction of ores that is to be found anywhere in this world. I agree with him as to the healthfulness of the climate and the purity of the waters. I agree with other gentlemen who have spoken here about the advantages of their respective localities; but I say to you, Mr. Chairman, that there are advantages which may be claimed, that overshadow all of these, by the magic city of Silver Bow County. (Applause). I recall to my mind a little speech that was made by my intelligent friend from Custer County (Dr. Burleigh), who is generally right on most of the propositions that have been discussed in this convention, when he alluded to a visit he made recently, or sometime in the last year, to the silver city wherein he was troubled a great deal with the smoke. I believe that the gentleman must have been laboring under a fit of dyspepsia .or something of that kind. (Laughter). It might have been that during the visit of this distinguished gentleman there had settled over the city by reason of the calmness in the air, which sometimes happens, a little smoke, but I say to the gentleman within the last several months he might have visited there and not have met with this disadvantage or disagreeable feature. The gentleman said that he smelt sulphur over there. He said it was too suggestive of the future. I have no doubt sulphur seems to be suggestive of Sheol, and probably the gentleman from Custer is a little tender upon that subject. (Laughter). I am reminded to suggest also to this gentleman that I believe he is an admirer of the ladies, and I must say that the ladies are very fond of this smoky city, as it is sometimes called, because there is just enough arsenic there to give them a beautiful complexion, and that is the reason the ladies of Butte are renowned wherever they go for their beautiful complexions. (Laughter). I believe this will be urged—because the interests of the ladies are paramount to everything else—as one reason why the capital should be at Butte. Now, talking about this smoke, I believe there are times when there is smoke settling over the city, but I say it would be a great deal better for other cities in the territory if they had more smoke and less diphtheria and other diseases. It has been believed by all the physicians of Butte that the smoke that sometimes prevails there is a disinfectant, and destroys the microbes that constitute the germs of disease. I believe the gentleman is pretty well posted on that matter, and while it is disagreeable, it is an advantage in some respects, and it would be a great advantage for the other cities, as I have said, to have a little more smoke and business activity and less disease. Now, I am not one of those that believe in trying to establish the prosperity or the reputation of one place by pulling down that of another. and I am sorry that there has been manifested upon this floor a little disposition to criticise, perhaps a little too severely the actions of people who may happen to live in any one locality. I say a man might just as well try to establish his reputation by traducing that of his neighbor and we know that this generally results in a signal failure. I believe in the great race for prosperity, for wealth and for glory on behalf of the cities of this Territory, but they should not go into the race handicapped, nor should they try to build their respective places up by culminating and belying others I should like to see the city of Helena contain a quarter of a million of people: it would be so much the better for Butte. I should like to see Anaconda grow and prosper; it would be an advantage to Butte; and I still say right here in regard to the town of Anaconda, that it has been stated that there is feeling between these two cities, and that Anaconda is jealous of Butte, and Butte is jealous of Anaconda. I only say this to disabuse the minds of people who may entertain such ideas as this—I will only say that the city of Anaconda is a progenitor of Butte City, the necessary auxiliary and the outgrowth of the great mining industries of Butte, and its leading citizens are citizens of Butte and have been identified with Butte in many ways, and the most friendly feelings exist there among the people of each place, each towards the other. Butte jealous of Anaconda! Butte is jealous of none of them. Butte can afford to be magnanimous and she is not jealous of any of them. I wish that Deer Lodge, that Great Falls, that all the towns of this Territory might grow up, that we might join together here to build up a great integral whole rather than to tear each other to pieces. Whatever tends to develop one section contributes to the prosperity of the entire Territory or State. Whatever tends to promote the interests of any one town of this Territory promotes the interests of this Territory, however remote it may be I could wish that the beautiful turfs, the sweet flowers and the rippling waters of those streams in this modern Arcadia that have been so beautifully portrayed by my learned friend from Gallatin could be wafted to delight and soothe the one hundred thousand inhabitants in the beautiful valley of Gallatin. I trust we may work to the common end, that we may develop the State here and rise above that feeling which would seek to have us detract from the interests of any one particular locality. But, now, to return to the subject matter of my remarks, I desire to say to you that Butte does present advantages for the temporary or permanent location of the capital, as the case may be, and I may say that while I have reasonable hopes that this temporary capital will be located at Butte, I am willing notwithstanding that fact to say that it shall be submitted as early as possible to the people of the State, and let them decide it, for to them the question belongs. We have over there in Silver Bow County a city of double the size of any other, I believe, in this Territory. It has the name of being the greatest producer of the precious metals of any city upon the face of the earth. We know this, that it does produce more than one-half of all the precious metals, of the valuable metals, I may say, of the Territory of Montana. It possesses all the advantages that pertain to any city in the Territory. We have pure water; we have churches; we have a refined and elevated society. We have all the advantages which pertain to any civilized city wherever you go in these United States. Now, we shall make no special claim but we have advantages that have been claimed for all of these other cities and in addition to that we have the center, we may say, of the population, or probably as nearly as the city of Helena. We have there a railroad center that will not be surpassed in a short time by any place in this Territory. And the gentlemen have alluded to the fact that Helena people have built a road to Butte, but I say that the object of building that road to Butte was because Butte had her minerals and other articles for furnishing that road transportation, and while due credit should be given to the gentlemen who invested capital to build it there, I say that Butte is to be commended because she has the power to draw the railroads to her. We are now upon the line of this road that is going in a short time no doubt to be extended to the Pacific Coast, and then it will be part of a great highway, and the beautifully equipped coaches and dining cars that stop there now will go on their way to the Pacific Coast. We are now, or will be very soon, on the great highway of the Northern Pacific Railway, for they have concluded to build from Bozeman through to Butte, and I have no doubt will extend on to Gallatin. So it will be as well as Helena upon the great highway of that road; and the Union Pacific that is furnishing facilities for building up that longer than any other great trunk line is about to extend or make connection with the Pacific Coast; so that in a very short time we will be upon three great lines of railway extending from the east to the west; and it is a well known fact that a Chicago and Northwestern road now building into Dakota Territory near the Black Hills is extending out westward and has Montana in view; and within perhaps two years we shall have the Chicago and Northwestern road that will penetrate a country over here that is noted for its grasses and for its fuel, its coals and wood, that is almost terra incognita at present and it will open the country extending from the Madison Valley through to the Sweetwater country, and make it tributary to Butte. So that none of these roads that come into this Territory can afford to miss Butte, because she has the prosperity to draw them to her. Why, the books show that Butte last year paid to the various railroad companies over three millions of dollars for freight alone. I say that in the consideration of this question where we shall locate, temporarily or permanently, the capital of the State of Montana, the claims of Butte, I consider and believe candidly and firmly, to be paramount to those of all others, and I stand here today to support her claims, to advocate her cause and shall vote for the establishment temporarily, and, of course, when it comes up for permanent adoption the people there will have something to say about that themselves, and I will be one of them, I hope. And I shall vote for the permanent location of the capital there. I will not detain you any longer with my remarks, but simply desire to put myself upon record here on these questions and without wishing to detract from Helena or any other place, I consider it my first duty to stand here and claim as I can justly proclaim the advantages of Butte for this temporary location of the capital.

Mr. Burleigh, of Custer: I desire to detain the convention only a moment for the purpose of explanation. My friend states that when I was in Butte last year during those positive and noxious exhalations from their furnaces that I was laboring under dyspepsia. I admit that I was not feeling well, and I regret exceedingly that my friend was not there at the time. I was not only laboring under an attack of dyspepsia but of a difficulty of breathing and some nervous prostration, and I have no doubt my friend will sympathize with me in those feelings when I state that it was just after the October election. (Laughter and applause)

Mr. Robinson, of Deer Lodge: I have no desire to prolong the discussion which has seemed to me to have wandered widely and very materially from the question under discussion and consideration by this committee. I believe that my ornate friend from Lewis & Clarke County, Major Maginnis, who is usually very clear and usually in the habit of sticking to the text as close as a young dude to his first girl or a pitch plaster to a tight board has certainly digressed. If I understand the proposition that has been discussed, that is being discussed before this committee at the present time, it is one that has already been settled by this committee, and unless there is a motion to reconsider that proposition, and it comes up in successive terms after being voted down time and again ad infinitum, there is no end to it and we will keep repeating the dose both in argument and vote. If I understand, the convention has already fixed that proposition by filling in the blank in this Proposition No. 18, by its vote in this Committee of the Whole, inserting the word Anaconda. Then, if that is the case, this committee has settled the question that has been so much discussed, that we have been entertained by the gentlemen for hours and hours upon. The committee by its vote last week settled the question by filling in that blank the word Anaconda, as the place where the temporary capital of Montana should be until its final location by the voice of the people. I believe I am correct as to that vote. Then, if that is the case, why the necessity of this prolonged discussion as to which place is proper for the temporary capital of Montana, and whether or not this convention has the power to change it from Helena or not? If I am correct upon this proposition, why the necessity of the prolonged discussion upon this proposition that has been indulged in by the committee, unless it be upon the hypothesis as I suggested that the committee has unlimited power to vote upon this and to undo what it has done by a subsequent vote, without a reconsideration, to amend by filling in some other place, and so on without end, which I do not understand it is the power of the committee to do. But once it has been voted upon and fixed, that ends so far as the committee is concerned and brings it back into the convention for its consideration. Now, then, if I understand it correctly, the question under consideration now is whether or not it is expedient for the first Legislative Assembly after the formation of the State government to provide for an immediate submission of this question to the people of the State, or whether or not it is contemplated in the proposition as reported by the committee it shall be submitted by the third Legislative Assembly that may convene after the adoption of this constitution, or whether or not the amendment by the gentleman from Cascade, by inserting the section, shall be substituted. That, I understand, is the whole proposition before this committee, upon which proposition I propose to speak. I do not believe, sir, that it is expedient to delay the submission of this question for the ten years. I do not agree with my friend, Mr. Rickards, from Silver Bow County, that it would be well to retain it as it is in the report of the committee, that is, the third session after the adoption of this constitution. Let us for a moment glance at it and see what that will lead us to. It is contemplated in the framing of this constitution and the Enabling Act of Congress that the first Legislative Assembly is to meet this fall, probably in November or December. If that is the case, it will be the first session of the Legislative Assembly of the State of Montana. Then, if it is to be submitted at the next general election after that session, that next general election, as I understand it, would fall probably in the month of November, eighteen hundred and ninety, a year from this coming November. If it is to be submitted after the meeting of the second Legislative Assembly, that would bring it in November, eighteen hundred and ninety-two, for submission—that is, that Legislature would provide for it, and if it is to be taken up and provided for by the third Legislative Assembly, which would make it ten years before this proposition could be submitted to the people, that is before a final vote would be taken on the proposition embodied in this proposition, that if at the first election there could not be a vote or a majority of the people for one particular place, which in all probability would be the case, and there is not a majority of all the votes for one place, then it shall be submitted at the next subsequent election of the State which will prolong the definite settlement of the question two years longer, and then the two places having the highest number of votes at the first election shall be voted for. So that if we are to take it as the report of the committee is, it will be ten years before this question can be settled at all. If, on the other hand, we are to provide that the first Legislative Assembly shall provide for the submission of this question to a vote a year from next fall, then, in all probability it will be two years or three years from this coming fall before this capital question can be settled, because the probabilities are nineteen to one that the first election that will be held on that proposition, the different places will be voted for and that no one place will have a majority of the entire vote of the State. Then, I say, that if the first Legislative Assembly provides for submitting this to a vote at the next general election as contemplated in this article, that the probabilities are nineteen to one that the question will not be settled until three years from next fall, in any event it cannot be settled until one year from next fall, which would be long enough in my opinion to leave the question unsettled. I do not understand, sirs, that we are here to take the chances particularly, and to legislate or to act in this convention upon the game of chance or the probabilities as to what the fluctuating population of the State may be ten or twenty years from now. If we defer it for twenty years in view of anticipation, why under the same rule not defer it for fifteen or twenty years longer? Our State government is not formed on the basis of probabilities and what we would be ten years from now, but is formed on the basis of our present population. If we are able to support a State government we should build and locate our capital within a reasonable time after our State government has been formed Then, I say, that I think upon this proposition the only thing for this committee to consider at the present time is whether or not the first Legislative Assembly shall provide for submitting this question to a vote of the people of the State at the next ensuing election after that, or whether it shall be the second or third Legislative Assembly. My judgment dictates to me that the first Legislative Assembly should make a proposition for a submission of this capital question to a vote of the people at the next general election ensuing thereafter, which would bring it in November, eighteen hundred and ninety This much for that part of the proposition. But upon the panegyrics that have been indulged in by those ornate gentlemen in favor of their particular towns in the Territory, I happen to represent a place that so far as any action of this convention is concerned, I might say, and I might feel, has, by ringing the changes, mutatis mutandis, that he who has not the freedom to fight for home let him fight for his neighbors, let him think of the glories of Greece and of Rome, and yet let him knock on his head for his labors. Sir, I represent a town that has none of these glories, but an humble village; but still I am fighting for the freedom and the glory of my neighbors, and in doing that, sir, I shall not allow the ornate gentlemen to disturb me in expatiating upon the greatness of these places. Yes, sir; I do realize that Helena is a great town indeed. Aye, sir, she is a noble city; aye, sir, an ignoble city. Her many admirers and advocates upon this floor have omitted many things in summing up her excellencies They have certainly overlooked the excellency of her old bourbon that I can testify to myself. Then, sir, they have overlooked the proposition that they have added to the geography of the country that has been taught in the public schools, that when the pupils are asked what is the greatest city of the United States they are required to say "Helena" I agree with them upon that, sir, but, sir, they have gone further, they have added to the Decalogue an eleventh commandment. I do not know whether it is a fact, but I have been advised that it is taught in the schools, at the Sunday schools and at the family hearth stones, to the children that they must repeat "None of thy shekels shall fly to the west side of the mountains." They have been true upon these propositions. Therefore, sirs, I can say that Helena possesses a great people. It is true, sir, and I will go further than my learned friend, Major Maginnis, I believe that but for Helena there would be little of Montana Territory. I am ready to go upon my knees and with uplifted eyes and hands thank my stars that there is such a place as Helena, and that we owe all the blessedness we enjoy to Helena. I admit that Butte would have been insignificant but for Helena, as suggested by my friend, Major Maginnis, a fact that I was not aware of before that the North-Pacific Railroad would not have been built, sir, but for the fact of the suggestion of the Helena people that there was a country over there. They would not have gone there to see whether there was a mining country or not but for the suggestion of my friend that I have been intimate with for twenty odd years, and I know he tells the truth—that he suggested it to them. Another thing, sir, that I am satisfied of, and that is, that but for the suggestions of Helena, the President of this convention, whom I regard as having given the mines there their first impetus by risking one hundred and fifty thousand dollars of his own money in the first mining enterprise established there. I believe, sir, that it was Helena that suggested all that to him, and that he never would have thought of it but for Helena. Helena inspired the President of this convention to give mining its first impetus there. I believe, sir, but for Helena in her endeavors ten years ago, or twelve years ago, who encouraged this consideration of railroads that we would have had but the North-Pacific Railroad in Montana today, and the building of that was impelled by a gigantic subsidy from the United States—the North-Pacific would be the only railroad in Montana but for the efforts, I say, of Helena ten or twelve years ago to encourage the construction of railroads in Montana. Yes sir, in the assemblages of Montana, I can remember as I see it around me today that whenever a proposition that most favored Helena struck the hearts of the people I could hear the vibrations there then as I do today. But for the plaudits that came from the galleries from the fair and unfair of Helena, to encourage the construction of railroads, that Utah and Northern would never have been built. We owe all, I am willing to acknowledge, that we owe all we have or ever will have to Helena. Then I would not allow the gentlemen to disturb me in my need of praise for what Helena has done. We, the balance of us, are humble adjuncts and seconders of the motion of Helena. We are willing to contribute our mite to Helena as we have always done, and I believe they have thanked us for it. We admire Helena, but nevertheless, I suggest this, that the Helena people have not begotten any mutual admiration society. Now, then, if we will cut for ourselves outside of Helena we will create an admiration by Helena for us. And if we do that we will mutually admire each other. We admire people here, and we want to make them admire us a little. I do not believe that they have had a great deal of admiration for us before, but I propose, sir, so far as my vote is concerned to make Helena admire us a little on the west side of the mountains, although she has made us. I say, sir, that wherever the lions of Helena have belched forth their roars, I hear the echoing plaudits coming from the sacred city. This is all right in launching forth those enconiums but still it is no reason why we should notwithstanding these things act independently for ourselves; and as has been suggested by members on that branch of the proposition, why, this great metropolis should not be the capital of the State on account of the corrupting tendencies and influences and pressure of those things. Why, the place where there is the regular chance for these things to occur is the better place for the capital. Now, sir, upon that proposition I am thoroughly in accord with that view of it, that is, I have seen the pressures brought to bear right in this town. I have seen pressures brought to bear on Legislative Assemblies, where I could say to a positive certainty that where they have a deep interest upon a Legislature not one in five of those Legislatures would ever own itself or dare to speak its own feelings. With all due deference to the firmness of man I have seen that occur right in this city. I have seen measures proposed in the Legislative Assembly here that if there had been a fair discussion of them among the members alone, cut loose from outside influences, the measure would not have received one vote in five of the Assembly; yet I saw those pressures brought to bear by the business men of this town—influencial men—men who understand those things and ways of handling men. They have been brought to bear, and I have seen the men yield and go away one by one. My friend, Marrion, who is looking at me, has seen the same thing, and knows it as well as I do. They would go away until these outside pressures in the town would secure a majority of them. That is one of the effects of having the capital in a place where there is as much influence for evil as there is here, that is, if this place is as great as her orators are willing to consider her. Then, gentlemen, I do not desire to detain you longer on this thing because it is not an issue, and I may say I am in favor of a proposition to submit this question to a vote of the people for the location of the capital at the next ensuing election after the first meeting of the Legislative Assembly, which is one year from next fall, the earliest possible time.

Mr Goddard, of Yellowstone· I do not expect to make any remarks upon this proposition, I do not expect to inflict this patient audience of this constitutional convention with a speech, but inasmuch as other gentlemen upon this floor have disregarded my feelings in this matter and have punished me, I see no good reason why I should not afflict them So far as my vote and my action is concerned upon the proposition which is pending before this committee, I will say that it will not be influenced by any man in Helena, in Butte, in Anaconda, in Billings or anywhere else, but that it will be influenced by my own feelings and conscience. So far as my vote upon this proposition is concerned, it will be cast with an eye single to the prosperity, to the best interests and to the convenience of all the people of the State of Montana. I do not believe that the question of the capital of this Territory or of this State is a subject of barter and sale. I do not believe because Anaconda has made a proposition to entertain the Legislature and the Governor, the Lieutenant-Governor and the other State officers of this State over at their city that this convention is bound to accept it. If that were the case, I would undertake to say that every capital in every State in the Union would be moved inside of twenty-four hours. There is another consideration that has been advanced here by almost everybody who has advocated one or the other of these places, and that is based upon the population, upon the wealth, upon the resources, and upon the advantages so far as money and all that sort of thing is concerned; but I want to say that none of those things will control me so far as my vote and my action is concerned on this proposition. I do not think that because Helena is a large city it is entitled to the capital of Montana; neither do I think because Butte is the largest city in the Territory that it is therefore by reason of its population entitled to the capital. I do not believe because Anaconda is a great mining camp, because she has a spur of railroad running in there on which she backs her friends into town, that she is entitled to any more consideration than any other town in the Territory, provided that town is located centrally and with a view to reaching it by all of the usually traveled routes of the Territory. So far as I am concerned, I believe that the capital of the State that will be, should be located at a point that will be most convenient for all sections of the Territory regardless of the population of the town or its wealth; and as to the permanent location of the capital, I am in favor of locating it at the earliest day possible, and with a view to that I am in favor of leaving the capital where it is until the people decide the question (Applause in the galleries) As I said before, my vote will not be controlled by any of these considerations except the one of convenience, and I am in favor of stopping this matter right where it is. It has already degenerated into something not very far above a petty wrangle; it has engendered, I am sorry to say, some very hard feelings which have cropped out in the speeches of the gentlemen who have talked about this matter. It is not the proper place for engendering such feeling, and I am opposed to it. While I might with equal consideration claim that because Billings is located in one of the most beautiful valleys in the Territory of Montana, because she has a population of honest, industrious and intelligent people, because she has the facilities for building the capital building, because she has pure water and pure air and all that sort of thing, that she would be entitled to the capital, I would not for one moment rise in my seat and ask that the capital be located permanently at the town of Billings, simply because I believe it is my duty, as I believe it is the duty of every other man on this floor to vote to locate the capital at the most convenient place in the Territory of Montana. I do not believe Billings would be the most convenient. While some of these other valleys may produce larger potatoes than the valley of the Yellowstone, while some of these places may produce more wealth and more ore than the town of Billings, I want to say that the people down in my section of the country, although they do not produce the largest potatoes or largest specimens—I want to say that they are busily engaged in producing a class of energetic, patriotic and honest citizens. (Uproarous laughter) I give you my word of honor I had no idea that that construction would be put upon my language. (Continued uproarous laughter) but I want to say furthermore, since that construction has been placed upon it by the people of this convention and in the galleries, that nevertheless it is true; and I will say in conclusion that when I have cast my vote upon this proposition I will have the consciousness of knowing that I have done what I consider to be my duty and that I am casting my vote and not the vote of any other man and I will have no apologies to make to my constituents or anybody else.

The Chairman: The question before the committee is on the amendment offered by the gentleman from Cascade County to amend Section 2 by striking out the word "three" in line two and inserting in lieu thereof the word "second".

The Chair put the question on the said motion of the gentleman from Cascade (Mr. Collins) and a vote being taken the same was declared lost.

The Chairman: What is the pleasure of the committee

Mr. Courtney, of Silver Bow: I move the adoption of the Section as it now reads.

The motion was seconded.

The Chair stated the motion.

Mr. Rickards, of Silver Bow: Is there not still pending an amendment of Major Maginnis to strike out the proviso?

The Chairman: No sir; that was lost in the morning hour.

Mr. J. R. Toole, of Deer Lodge: I ask that the Clerk of the committee read Section 2 as it is now.

The Clerk read as follows: The Legislative Assembly shall have no power to change or locate the seat of government of the State, but shall at its first regular session after the adoption of this constitution, provide by law for submitting the question of the permanent location of the seat of government to the qualified electors of the state at the general election then next ensuing, and a majority of all votes upon said question cast at said election shall be necessay to determine the location thereof. Said Legislative Assembly shall also provide that in case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast, shall be submitted in like manner to the qualified electors of the State at the next general election; provided, that until the seat of government shall have been permanently located as herein provided, the temporary location thereof shall be and remain at the city of Anaconda.

Mr. J. R. Toole, of Deer Lodge: I move that the section as read be adopted.

The motion was seconded.

The Chair put the question upon the motion of the gentleman from Deer Lodge (Mr. J. R. Toole) and a division being called for the same was declared lost by a vote of thirty in the affirmative to thirty-seven in the negative. (Applause in the galleries)

Mr. Buford, of Madison: I now move to strike out the word "Anaconda" and insert "Helena".

The motion was seconded.

Mr. J. R. Toole, of Deer Lodge: I rise to a point of order. The section was not adopted. We have no section there now, there is no place in which to insert.

Mr. Maginnis, of Lewis & Clarke: Quite right, Mr. Chairman, and I offer the following in lieu of the section, which the Clerk will read.

The Clerk read as follows: Section 2. The Legislative Assembly shall have no power to change or locate the seat of government of the State, but shall at its first regular session provided by law for submitting the question of the permanent location of the seat of government to the qualified electors of the State at the general election then next ensuing, and the majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof Said Legislative Assembly shall also provide that in case there shall be no choice of location at said election the question of choice between the two places for which the highest number of votes shall have been cast, shall be submitted in like manner to the qualified electors of the State at the next general election.

Mr. J. K Toole, of Lewis & Clarke: I move the adoption of this section.

The motion was seconded.

Mr. Hartman, of Gallatin: I move to amend by inserting the following, "Provided that until the seat of government shall have been located as herein provided, the temporary location thereof shall be and remain at the city of Bozeman."

The motion was seconded.

Mr. Rickards, of Silver Bow: I move an amendment to the amendment by striking out the word "Bozeman" and inserting in lieu thereof the words "Butte City"

Mr. Clark, of Silver Bow: I second that motion.

The Chairman The question is on the motion of the gentleman from Silver Bow to strike out Bozeman and insert Butte City.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Rickards) and a division being called for the same was declared lost by a vote of twenty-eight in the affirmative to thirty-seven in the negative. (Applause in the galleries)

The Chairman: The question now is upon the amendment of the gentleman from Gallatin to insert Bozeman.

The Chair put the question on the said motion of the gentleman from Gallatin and a division being called for the same was declared carried by a vote of thirty-six in the affirmative to twenty-one in the negative.

Mr Warren, of Silver Bow. I move the adoption of the section.

Mr Collins, of Cascade· I move the following amendment· Strike out in line three the word "permanent" and insert "temporary", and strike out in line four "majority" and insert "plurality", so that at the first election we shall vote upon the temporary location of the seat of government.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Cascade (Mr. Collins) and a vote being taken the same was declared lost.

Mr Warren, of Silver Bow: I now renew my motion to adopt the section

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Warren) and a vote being taken the same was declared carried.

There being no further amendment to Section 2, the Clerk read Section 3 as follows· Section 3. When the seat of government shall have been located as herein provided, the location thereof shall not thereafter be changed, except by a vote of two-thirds of all the qualified electors of the State voting on that question at a general election, at which the question of the location of the seat of government shall have been submitted by the Legislative Assembly.

There being no amendment to Section 3, the Clerk read Section 4, as follows. Section 4. The Legislative Assembly shall make no appropriations or expenditures for capital buildings or grounds until the seat of government shall have been permanently located as herein provided.

There being no amendment to Section 4, the Clerk read Section 5, as follows· Section 5 The several counties of the State shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity or other misfortune, may have claims upon the sympathy and aid of society.

Mr Rickards, of Silver Bow: I move that when the committee rise they report back Proposition No. 18 with the recommendation that as amended it do pass, and that the committee do now rise.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Rickards) and a vote being taken the same was declared carried.

IN CONVENTION.

The President in the Chair.

The convention was called to order.

The Chairman of the Committee of the Whole reported to the President.

The President: The Chairman of the Committee of the Whole desires a few minutes in which to make a report. If there be no objection the time will be granted.

Mr. Rickards, of Silver Bow: Awaiting the report of the Chairman of the Committee of the Whole I move that the convention take a recess of ten minutes.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Silver Bow (Mr. Rickards) and a vote being taken the same was declared carried.

The convention took a recess at 5:45 P. M., of ten minutes.

The convention was called to order at 5:55 by the President.

Mr. Hershfield sent up a report of the Committee of the Whole.

The President: The Chairman of the Committee of the Whole reports as follows. The Clerk will read the report.

The Clerk read as follows: Mr. President, your Committee of the Whole have had under consideration Proposition No. 18, General File No. 17, Article on State Institutions and Public Buildings, and beg leave to report the same back to the convention with the following amendments, which the committee recommend be adopted. Your committee would state that in the amendments offered references to numbers of lines and sections are to such as appear in the printed bill.

Amend Section 1 by inserting after the word "mute" in line two the words "soldiers' home".

Amend Section 2 to read as follows: Section 2 The Legislative Assembly shall have no power to change or locate the seat of government of the State but shall at its first regular session provide by law for submitting the question of the permanent location of the seat of government to the qualified electors of the State at the general election then next ensuing, and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said Legislative Assembly shall provide that in case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the State at the next general election; provided, that until the seat of government shall have been prmanently located it is herein provided that the temporary location thereof shall be and remain at the city of Bozeman.

(Signed) L. H. HERSHFIELD.

Mr. J. R. Toole, of Deer Lodge: I move the adoption of the report of the committee.

The motion was seconded.

The President: The question is upon the amendment offered to Section 1.

The Clerk read as follows: Amend Section 1 by inserting after the word "mute" the words "soldiers' home".

The Chair put the question on the said amendment and a vote being taken the same was declared carried.

The Clerk read the substitute for Section 2 as reported by the committee.

The President: What is the pleasure of the convention as to Section 2?

Mr. Rickards, of Silver Bow: I would move to strike out the word "Bozeman" and substitute in lieu thereof the words "Butte City".

Mr. J. R. Toole, of Deer Lodge: Is there a motion before the house?

The President: There is a motion before the house to adopt Section 2, followed by a motion to amend by striking out of the amendment offered by the Committee of the Whole the word "Bozeman" and insert in lieu thereof the word "Butte". The question now is upon the amendment offered by the gentleman from Silver Bow.

Mr. Rickards, of Silver Bow, called for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Bickford, Breen, Callaway, Courtney, Dixon, Dyer, Fields, Gaylord, Haskell, Hatch, Hogan, Kennedy, Knowles, Kohrs, Luce, Maginnis, Marrion, Marshall, Myers, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Mr. President—32.

Nays: Brazleton, Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J., Burns, Edward; Cardwell, Carpenter, Cauby, Chessman, Collins, Cooper, Conrad, Craven, Durfee, Eaton, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Hershfield, Hickman, Hobson, Joyes, Kanouse, Knippenberg, Loud, Mayger, McAdow, Middleton, Mitchell, Parberry, Rotwitt, Toole, J. K., Watson, Witter—40.

Absent: Webster—1.

Paired. Joy, Muth

The Chair announced the vote and declared the motion to amend lost.

Mr. Conrad, of Choteau. I move to strike out Bozeman and insert "Helena'.

The motion was seconded

The Chair stated the motion.

Mr. Conrad, of Choteau: I would like to have the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Bickford, Browne, Bullard, Burns, A. F.; Burns, A. J.; Burns, Edward, Carpenter, Cauby, Chessman, Collins, Conrad, Craven, Gibson, Gillette, Goddard, Graves, Hammond, Hershfield, Hobson, Joyes, Kanouse, Knippenberg, Maginnis, Marrion, Marshall, Mayger, Mitchell, Parberry, Ramsdell, Rotwitt, Toole, Jos. K.; Watson—32.

Nays: Aiken, Brazleton, Breen, Buford, Burleigh, Callaway, Cardwell, Cooper, Courtney, Dixon, Durfee, Dyer, Eaton, Fields, Gaylord, Hartman, Haskell, Hatch, Hickman, Hogan, Kennedy, Knowles, Kohrs, Loud, Luce, McAdow, Myers, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Witter, Mr. President—39.

Paired: Joy, Muth—2.

Absent: Webster, Middleton—2.

The Chair announced the vote and declared the motion to amend lost.

Mr. J. R. Toole, of Deer Lodge: I move to amend the section as read by inserting the word "Anaconda" instead of Bozeman.

The motion was seconded.

Mr. Maginnis, of Lewis & Clarke: I move that the convention take a recess until eight o'clock.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Maginnis) and a vote being taken the same was declared lost.

The President: The question now is upon the amendment offered by the gentleman from Deer Lodge to insert "Anaconda" in lieu of Bozeman.

Mr. J. R. Toole, of Deer Lodge: I call for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows

Ayes: Aiken, Brazleton, Breen, Browne, Burleigh, Burns, Edward; Courtney, Dixon, Durfee, Dyer, Fields, Gaylord, Haskell, Hatch, Hogan, Kennedy, Knowles, Kohrs, Marrion, Marshall, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R; Warren, Whitehill, Winston, Mr President—32.

Nays: Bickford, Buford, Bullard, Burns, A. F.; Burns, A. J.; Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Craven, Eaton, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Hershfield, Hickman, Hobson, Joyes, Kanouse, Knippenberg, Loud, Luce, Maginnis, Mayger, McAdow, Middleton, Mitchell, Myers, Parberry, Rotwitt, Toole, J. K.; Watson, Witter—40.

Absent: Webster—1.

Paired: Joy, Muth—2.

The Chair announced the vote and declared the motion of the gentleman from Deer Lodge to amend as lost.

Mr. Parberry, of Meagher: I move that we now take a recess until eight o'clock.

The motion was seconded.

Mr. Cardwell, of Jefferson: I renew my amendment that I sent up to the President's desk.

The President: That will be in order when the motion to take a recess is disposed of.

The Chair put the question on the motion of the gentleman from Meagher (Mr Parberry) that the convention take a recess until eight o'clock and a vote being taken the same was declared lost.

The President: The gentleman from Jefferson offers an amendment as follows: Amend Section 2, line ten, by inserting "Boulder City" in place of "Bozeman".

Mr. Cardwell, of Jefferson: I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

Mr. Maginnis, of Lewis & Clarke: I call for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Brazleton, Breen, Bullard, Callaway, Cardwell, Collins, Courtney, Fields, Hammond, Hatch, Hogan, Joyes, Knowles, Maginnis, Marrion, Mitchell, Parberry, Ramsdell, Robinson, Schmidt, Stapleton, Whitehill, Winston, Mr. President—24.

Nays: Aiken, Bickford, Browne, Buford, Burleigh, Burns, A F.; Burns, A. J.; Burns, Edward; Carpenter, Cauby, Chessman, Conrad, Cooper, Craven, Dixon, Durfee, Dyer, Eaton, Gaylord, Gibson, Gillette, Goddard, Graves, Hartman, Haskell, Hershfield, Hickman, Hobson, Kanouse, Kennedy, Knippenberg, Kohrs, Loud, Luce, Marshall, Mayger, McAdow, Middleton, Myers, Reek, Rotwitt, Rickards, Sargent, Toole, J. R.; Toole, Jos K, Warren, Watson, Witter—48.

Paired: Joy, Muth—2.

Absent: Webster—1.

The Chair announced the vote and declared the motion of the gentleman from Jefferson lost.

Mr. Fields, of Park: I move to amend by inserting the city of "Livingston" in place of "Bozeman".

The motion was seconded.

The Chair stated the motion.

Mr. Fields, of Park: I call for the ayes and nays

The President: If there be no objection the ayes and nays will be entered in the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Bickford, Breen, Burns, Edward; Callaway, Cauby, Collins, Durfee, Eaton, Fields, Haskell, Hatch, Hogan, Knowles, Kohrs, Maginnis, Marrion, Mitchell, Myers, Parberry, Rotwitt, Rickards, Sargent, Schmidt, Warren, Whitehill, Winston—26.

Nays: Aiken, Brazleton, Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J.; Cardwell, Carpenter, Chessman, Conrad, Cooper, Courtney, Craven, Dixon, Dyer, Gaylord, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Hershfield, Hickman, Hobson, Joyes, Kanouse, Kennedy, Knippenberg, Loud, Luce, Marshall, Mayger, McAdow, Middleton, Ramsdell, Reek, Robinson, Stapleton, Toole, Jos. K.; Toole, J. R.; Watson, Witter, Mr. President—46.

Absent: Webster—1.

Paired: Joy, Muth—2.

The Chair announced the vote and declared the motion of the gentleman from Park lost.

The President: The following is offered by the gentleman from Missoula, Mr. Marrion.

Mr Hershfield of Lewis & Clarke: I move, Mr. President, that we take a recess until eight o'clock

The motion was seconded

The Chair put the motion on the said motion of the gentleman from Lewis & Clark (Mr Hershfield and a division being taken, the same was declared carried.

The President: The Chair desires to announce the following special committee on Warren's resolution relating to lead ores: Carpenter, J. K. Toole, Luce, Goddard, Conrad.

The convention took a recess until 8 P. M.

WEDNESDAY, AUGUST 7TH, 1889.

(Evening Session.)

The convention was called to order by the President at 8 P. M.

The Clerk called the roll

The President: The gentleman from Missoula (Mr Marrion) moved to amend the section by striking out the word "Bozeman" and inserting in lieu thereof the word "Missoula." Is there a second to that motion?

The motion was seconded.

The Chair stated the motion.

Mr Parberry of Meagher called for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal

The Clerk called the roll:

The vote stood as follows: Ayes—Aiken, Bickford, Brazleton, Browne, Burns, A. J.; Burns, Edward; Callaway, Cardwell, Carpenter, Chessman, Collins, Conrad, Courtney, Durfee, Gaylord, Gibson, Gillette, Haskell, Hatch, Hershfield, Hickman, Hobson, Hogan, Kennedy, Knowles, Kohrs, Maginnis, Marrion Marshall, Mayger, Middleton, Mitchell, Parberry, Ramsdell, Reek, Robinson, Rickards, Schmidt, Toole, J. K; Toole, J. R.; Whitehill, Winston, Witter, Mr. President—44.

Nays—Breen, Buford, Burleigh, Bullard, Burns, A. F: Cauby, Cooper, Craven, Dixon, Dyer, Eaton, Fields, Goddard, Graves, Hammond, Hartman, Kanouse, Knippenberg, Loud, Luce, McAdow, Myers, Rotwitt, Sargent, Stapleton, Warren, Watson—27.

Paired—Joy, Muth—2

Absent—Joyes, Webster—2.

The Chair announced the vote and declared the motion of the gentleman from Missoula (Mr Marrion) adopted

Mr Middleton of Custer: I desire to offer an amendment.

Mr. Maginnis of Lewis & Clarke: I have an amendment on the President's desk, the Chair will remember.

The President. The Chair has several amendments here that have been offered by gentlemen from various sections who favor the striking out and inserting The convention has adopted "Missoula." No further amendment to strike "Missoula" and insert is in order. It cannot now be stricken out except by a reconsideration of the vote.

Mr. Middleton of Custer I ask if that same thing did not happen as to two or three other localities?

The President: The Chair would say to the gentleman from Custer that the other amendments were offered as amendments to the amendment proposed by the committee of the whole, and this amendment prevailed. It is equivalent to the adoption of the word "Missoula" to fill the blank. It can only be reached by a reconsideration.

Mr. Middleton of Custer: I understand the rule to be that every section of the proposition is subject to amendment until placed on its final passage.

The President: The Chair would say to the gentleman that the convention, having adopted any proposition or resolution, cannot change it except by a reconsideration of the vote.

Mr. Middleton of Custer. I move to reconsider the vote by which the word "Bozeman" was stricken out and "Missoula" inserted.

The motion was seconded

Mr. Rickards of Silver Bow: I would like to ask if the gentleman making the motion voted in the affirmative.

Mr. Middleton of Custer: Yes sir.

Mr. Kennedy of Missoula: I move that the motion to reconsider be laid on the table.

The motion was seconded.

The President: It is moved and seconded that the vote to reconsider the motion by which "Bozeman" was stricken out and "Missoula" inserted by laid upon the table.

Mr. J. K. Toole of Lewis & Clarke: Does that not take the entire section with it?

The President: No, sir; the motion to lay upon the table and the motion to reconsider do not carry anything with them.

The Chair put the question on the said motion of the gentleman from Missoula (Mr. Kennedy) and a division being called for, the same was declared lost by a vote of twenty-five in the affirmative to thirty-five in the negative.

The President: The question is now to reconsider the vote by which "Bozeman" was stricken out and "Missoula" inserted.

Mr. Middleton of Custer: By leave of my second I withdraw the motion.

The President: The motion of the gentleman from Custer is withdrawn. The gentleman from Lewis and Clarke (Mr. Maginnis) offers to amend the section as follows:

The Clerk read: "I move to amend by striking out the proviso in Section 2."

The Clerk read the said proviso as follows: Provided that until the seat of government shall have been permanently located as herein provided the temporary location thereof shall be and remain at the city of Missoula.

The motion of the gentleman from Lewis and Clarke (Mr. Maginnis) was seconded.

The Chair stated the motion.

Mr. Carpenter of Lewis & Clarke: I shall say a very few words upon it, but it seems to me unnecessary that that proviso should remain in the section. It adds nothing whatever to the power of the people of the state, and takes nothing away from them. It was stated this morning by the gentleman from Gallatin that it was necessary that the temporary capital be named in the constitution, but I think that view has been exploded. The gentleman from Silver Bow (Judge Knowles), while opposed to that view of the question, stated to the convention as his opinion, that the striking out of that section would leave Helena the permanent capital. This cannot be the fact under the law. The elimination of that section would leave Helena as it is today, the capital of the territory, subject to the amendment of the legislature and the people. It would be simply a temporary capital. It would not be the capital by virtue and by force of the constitution.

The President: Will the gentleman allow the Chair to interrupt him a moment? The gentleman referred to the striking out of the section; this refers to the striking out of the proviso.

Mr. Carpenter of Lewis & Clarke: Yes, sir. As I said that would not leave Helena the capital by virtue of any force applied to it if the constitution should be adopted, but simply by force of the statute which was passed in 1874 and in this very section it is provided in any event that there shall be submission of the question of the permanent capital to the people three years hence, as the amendment that it should be submitted at the first session of the legislature was adopted. The act of 1874 provided that the capitol should be located at Helena. If the constitution is adopted, operating upon that amendment would have the effect of leaving the capitol temporarily and only so long as the legislature or the people should favor its retention where it is. Now, Mr. President, the ground that the people of Helena have taken is, as I understand it, the location of the capitol is a question for the people. It never has been regarded simply a question for the legislature, because the legislature provides for its submission to the people. It has never been so regarded under the Organic Act. It is not regarded in any case as a constitutional question, and the view that we take of it is that the judgment of the people should be taken upon it, and that that judgment should be final, but that there should be no disposition of it without the expression of the popular will. Now the capitol is at Helena by force of the verdict of the people. The question as to its location in Helena was submitted to the people in 1874, and the people passed upon it. Now, the people having placed it temporarily in Helena we think that no body of men should undertake to remove it except through the authority of the people. (Applause in the galleries). We would ask now that the capitol remain where the people have placed it until the people by their vote say that it should be located somewhere else. (Applause). That is somewhat of the claim that Helena makes. Now, that question of the location of the capitol when Helena was selected was submitted to the people as a separate and independent proposition. That is the only way that the judgment of the people could be passed upon it. It was not intertwined and intermixed with other questions. If the place is named in this constitution so that it goes into the body of the constitution for the expression of the popular will, the people will have no opportunity to pass separately upon that question. The alternative will be presented to them either excepting this proposition which they cannot vote separately upon and express their independent judgment upon, or reject the constitution that is offered. I take it that the people of this territory desire the constitution which they can adopt, and desire questions submitted to them in such a way that they can express their judgment in a proper way upon them. This question has not been agitated by the people at all. The people have been contented that the capitol should remain where they put it until so voted by their judgment and by their mind and the expression of their independent will to take it to some other place. If this capitol had been located at Missoula, or Anaconda, or Bozeman, or Butte, or any other place, I for one should have taken the position that if the people put it there it should stay there until the people by their will expressed on that one subject should decide that it should be removed to some other place. It seems to me that upon that question, which is always a question to be submitted to the people, there should be no desire to place the name of the capital in this constitution where it shall be fixed by the constitution itself, without any opportunity for the people to express their opinion upon it. Now, Mr. President, this question is a question of importance to the people. It is a question that should be considered with care and with deliberation. I impune the motives of no man in this constitution. I assume that every man in this body has voted honestly and conscientiously upon this question and upon all others There is no occasion for excitement; there is no occasion for undue haste; but this question ought to be considered carefully and with mature deliberation. I do not recognize the claims of any city or town in the territory to the capitol. Helena has no claim upon it in preference to any other place that I am aware of. Helena has no right to ask to be considered, nor has Anaconda, nor Butte, nor Bozeman. It is a question for the people to consider and it is not for any one place to claim the capitol or any other public building. It is a question of great importance to the people. The question is not whether Helena, or Bozeman, or Anaconda, or Butte, or Missoula or any other place shall be gratified by the capitol being located within the limits of one of those places, but whether the interests of the people of Montana shall be better subserved by its location in one place than in another. It is the people of Montana and their interests that alone are to be consulted and considered. We assert and we think it would be the judgment of the people that for their convenience Helena would be the most eligible place, but I may be mistaken as to what their opinion would be. It might be very different if the question were submitted to them again, but at all events we ought not to undertake to force upon the people anything that they have never expressed their desire for. There are reasons which I think are strong, showing that Helena is the most convenient place in the territory for the people. There are more interests and more diversity of interests here than anywhere else. No matter how many trains may leave Anaconda, it is not for the convenience of the people to go there, simply because people go to the capital not only because they have public business at the capital, but because they have some other business in connection with the public business; and we all know that there is scarcely a man in the territory, scarcely a sheep ranch or a cattle ranch or range but that people living in distant counties are interested with the people of Helena in the same enterprise. Now, Mr. President, these diversified interests, no particular one predominating, give a congenial atmosphere for the capital. It is not a place where only one enterprise exists, where only one genius presides, but here the diversity of interests is such that no legislature is liable improperly to be interested in favor of one branch of industry, in favor of one class of legislation, improperly against any other that would be entitled to its fair consideration. But I am not here to discuss the merits of Helena. I have lived in this city for five years, and I am proud to say that I never heard from a Helena man a word of opprobium uttered against any sister city of Montana. (Applause). They have always spoken of Butte with pride and have delighted to recommend her to strangers traveling through the territory They have written enconiums upon her. In almost every letter they have written to the East or South they have spoken of the virtues and advantages of the territory. We recognize Butte as the greatest mining camp in the world, and the smoke from her camp fires is a constant reminder of her thrift and her industry. It is the same of Anaconda, which I believe we have all delighted to speak of as possessing the greatest smelter in the world, the largest single branch of industry in existence in that line at least, so, too, of our sister cities, Bozeman and Missoula. But it is not, as I have said, a question for Helena to try to decide, or for that matter any of these other cities. It is a question that the people are intensely interested in, and in regard to which their interests alone should be consulted. So I say we ought to leave this proviso out of the section—leave the matter where the people have left it until they choose their own time to express their will upon it and in favor of its removal, if they desire its removal. And whenever they do desire this removal nobody more heartily than I will join with them in effecting their purpose. (Applause).

Mr. Luce of Gallatin : I will not occupy the attention of this convention for any great length of time, but I take the same position that I did this morning, that unless some place is named as the temporary seat of government, that we will have none, notwithstanding the opinion of my learned friend who has just addressed the convention, and notwithstanding a contrary opinion from the other gentleman from Lewis & Clarke, whose opinions are entitled to a great deal of weight upon a constitutional or legal question. Now, sir, here is the only provision that we have in relation to the seat of government, and that relates entirely, as I said this morning, to the Territory of Montana and not to the State of Montana. It is Section first of this act of 1874. I have left my glasses at home and do not know whether I can see to read or not. (Reading). "Section 1. That the seat of government of the Territory of Montana be and the same is hereby changed from Virginia in the County of Madison, to the town of Helena in the County of Lewis & Clarke, upon approval hereof as herein provided." And the provision hereinafter which this section relates to is one that submits it to the people, and by a majority vote it should be changed—simply changed—from the city of Virginia to the town of Helena. There is nothing in this statute which provides how long it shall remain, or that it shall be the seat of government even, but it simply says that it shall be changed, and afterwards it provides that if the people by a majority vote, vote for the change, then the archives of the government shall be taken from the city of Virginia and brought to the town of Helena, and I understand that they were so taken, although our friends do claim that they were taken between two days, but however that may be, they were taken and brought here, and by a sort of common consent Helena has been the seat of government, that is all, so the people have got into the habit of coming here and attending the legislature; not that it is the seat of government except by virtue of this very section that I have read here that it should be changed. Now, then, that is the capital for the Territory of Montana. Where is the capital of the State of Montana? You may move it to Missoula so far as I care. If I go to the Supreme Court at Missoula my clients will pay my fare of course. (Laughter). And if I go to the legislature I will get mileage; but I undertook to say as a constitutional provision that this convention must name some temporary seat. Now, sir, it would appear from what the gentleman from Lewis and Clarke presents to this convention that this is a permanent arrangement. Why, they say this is a matter that the people should have something to say about. In the name of God, have the people in Montana, as they now exist, ever said that this capital should remain in Helena? Not once. I will call the attention of this convention to one provision in the constitution of Illinois—the first constitution formed under the Enabling Act—and I suppose if we would make a little further search we could find any number of cases of this kind. It provides in so many words: "The seat of government for the state shall be Kaskaskia until the general assembly shall otherwise provide" Those people of Illinois, old Ab. Lincoln and all those fellows who helped frame that constitution, they knew something They knew it was necessary in order to have a seat of government that it should name the place; and I say that if this convention adjourns without naming some place for the temporary seat of government, notwithstanding this opinion of my learned friend, the State of Montana will have no seat of government, and the gentlemen who are elected to the legislature, part of them may take their carpet bags and go over to Missoula and part of them to Anaconda and the balance of them down to Bozeman, and they will never know where they ought to gather together or where they are expected to go to. There will be no place for the Supreme Court, except they should gravitate to Helena by a sort of habit they have had ever since 1874 when the capitol was taken from the city of Virginia and brought to the town of Helena (Laughter and applause). Now, I have no hardness in my heart towards Helena. As I said this morning, I like her She is a big thing in the eyes of her own pepole, she is a tremendous thing if the feet in the gallery are any indication. (Demonstrations in the gallery) My views concur with those of Judge Knowles and Judge Dixon upon this point. We should have a seat of government, and we have not organized a government until we have named one. Now, you may name any place that you please—name Helena. Let it remain in Helena if you like. Name Missoula, name Anaconda; name Wilder's Landing or any other place, but for Heaven's sake name something and let us have a seat of government and a state organization, and not trifle with this matter as it appears to be the intention of some gentlemen upon this floor—and I impune nobody's motives; of course I believe everybody is as honest as I am; if he is not, God help him. (Laughter). I say in all sincerity of heart, they have knocked out this little jewel of mine in Gallatin Valley—this little city, located in a beautiful valley that my friend Martin Maginnis was down there one time giving us taffy, gave us to understand was an emerald gem set in those blue mountains, and as another distinguished gentleman, the Right Reverend Robert G. Ingersoll said about it "My God, what a beautiful place it is! It is a dimple in the cheek of Nature" But you have slighted it (Laughter) You have taken the capital now over to Missoula to the home of my friend, Mr. Bickford, and of my friend over there, Mr. Marshall, and I am contented to let it remain if it suits the convenience of this convention to do so. But I say you must have some place for the capital of the State.

Mr. Marshall, of Missoula: The seat of government when this State is formed will be and must be fixed by virtue of some clause in this constitution: Whether the provision which will probably be offered that all the laws existing in the Territory and in force in the Territory at the time it is admitted as a State into the Union as continued in force in the Territory will continue in force, the law that made Helena the capital of the Territory, or not, is a question that I do not propose to discuss That has been discussed by Mr Dixon and Judge Knowles, but unless that is in it, there can be no question about the matter. I think that the gentlemen will admit that the last clause in the twenty-fourth section of the Enabling Act is an absolute nullity, Congress cannot adopt a code of laws for the State of Montana. Congress saying that the laws heretofore in force in the Territory of Montana shall continue in force after it becomes a State, in my judgment, is a nullity. Congress can no more adopt a code of laws for the State of Montana than it can for the State of Minnesota or any other State It cannot provide what laws shall be in force in Montana, and I say that the provision of the twenty-fourth section which says that the laws of the Territory of Montana shall continue in force until changed by the Legislature is an absolute nullity.

Mr J. K Toole, of Lewis & Clarke: If this constitutional convention meets under and by virtue of the Enabling Act, then as the constitutional convention it has the power to repeal an act of the Legislative Assembly.

Mr. Marshall, of Missoula: This convention meets under the power granted by the Enabling Act; the Legislature of the State of Montana will meet under the power granted by the constitution that we send to the people and they adopt. That is true, there is no question about it in my mind; and that clause of the Enabling Act of Congress that applies to what shall be the law of the State of Montana is an absolute nullity and of no force. Then and now there is no law in existence that places Helena in any other position than that occupied by any other town or city in the Territory of Montana, and I do not believe that even if the constitution adopt a general provision that the laws of the Territory in force at the time of the adoption of the constitution should continue in force in the State of Montana, that it would place the capital at the city of Helena. The law of the Territory had nothing to do—no reference to the capital of the State of Montana. It fixes the capital for the Territory of Montana. There has been no capital fixed for the State of Montana. My judgment is that the city of Helena stands precisely upon the same footing that any city or town in the State of Montana stands, and it will be by virtue of some provision of this constitution that the capital will be at Helena if it is here; and this convention has the same power and the question is just as clearly presented as between Helena and Butte and Anaconda and Missoula and Bozeman as it would be if the capital was not at Helena today. Now, I think those are propositions of law that will be agreed to by legal gentlemen in this House. It seems to me that nobody will contend that Congress of the United States has a right to provide a code of laws for the State of Montana; I do not think it has, and I do know the provision of the twenty-fourth section of the Enabling Act which says that the laws of the Territory in force at the time the State is admitted into the Union shall continue in force until repealed by the Legislature is an absolute nullity. This constitution can say that and probably will say it, except so far as it is in conflict with the provisions of the constitution itself and with the constitution of the United States. Even if it asserts in general terms that fact as was argued by Judge Knowles and Mr. Dixon, I do not believe it would fix the capital at the city of Helena, because there is no law in force in the Territory now that fixes the capital of the State of Montana anywhere or has any reference to it. And I do contend that the city of Helena stands exactly in the same position that every other town and city in the State of Montana or the Territory of Montana stands.

Mr. Carpenter, of Lewis & Clarke: I will say one word. This act of 1874 fixes the capital at Helena. The capital is here, or the seat of government is here, by virtue of that act. Now, the act of Congress was "And all laws in force made by said Territories at the time of their admission into the Union shall be in force in said States, except as modified by this act." That is the law under which we meet as a constitutional convention. We accept the conditions of this Enabling Act when we do meet. Congress had a right to prescribe any conditions it chose. That is one of them. If the gentleman from Missoula is correct, as soon as this constitution is adopted, until the Legislature meet and enact a code of laws we would be without law in this Territory. This would be construed by any court of competent jurisdiction to mean that the laws of the Territory should be the laws of the State, and they would be whether we put in our schedule any provision or not, until they were altered or repealed by the Legislature. That is one of the provisions under which we frame this constitution. And under the force of this provision the laws would exist and be continued the same as if in all our statutes. Otherwise there would be no law to prevent crime. Murder would be rampant within the Territory. Any other construction would leave us in a state of anarchy, and this construction is reasonable and it is a construction that cannot be removed by the courts. (Applause)

Mr. Knowles, of Silver Bow: I agree with the distinguished gentleman from Missoula that that provision in the Enabling Act that provides that the laws of Montana Territory shall be in force in the State of Montana is an unconstitutional provision in that Enabling Act. The Congress has no constitutional authority to provide a code of laws for the State of Montana. It could provide a code of laws for the Territory, but when we come to be a State we have got to provide a code of laws for our municipal regulations ourselves. I do not think there can be any doubt about that For the gentleman to say that we accept this State government under the condition that is prescribed in the Enabling Act, and to say that where there is an unconstitutional provision in that act that we have got to accept that, too, it cannot be. We accept only in that Enabling Act what Congress may lawfully and legitimately do. What power have they in the matter of the legislation upon that subject we have got to accept? We can accept nothing further than that.

Mr. Hershfield of Lewis & Clarke: Do we state we form our government, too?

Mr. Knowles, of Silver Bow: Yes sir, we say we form our State government, I know, that is we say we are grateful to Almighty God for liberty, and I am somewhat doubtful whether some gentlemen here are, and that in accordance with the provision of the Organic Act we establish this constitution. And I have contended and other gentlemen have contended all the way through that we do not establish this—that that is a mere waste of paper; that it does not amount to anything whatever. To say that we could take an unconstitutional act of the Congress of the United States and galvanize it into life by our act is preposterous. I will ask the distinguished gentleman from Lewis & Clarke, Governor Carpenter, whether the Legislature of Montana or this constitutional convention, or any body of people in Montana Territory can make an unconstitutional law constitutional It is impossible to do so. There is no power given. It is like asking a blind man to see, a man without feet to walk. It cannot be done. Now, as to this question of capital. The question of the capital is this: If we do not establish the capital but do provide as we will in this constitution that all of the laws of Montana Territory shall be in force in the State of Montana, and we turn around then and say that wherever the word "Territory" is used or "Territory of Montana" is used that there shall be substituted the word "State" or the words "State of Montana". Then by virtue of this convention and this constitution the people will adopt these statutes of Montana Territory. The people in voting upon this question will adopt these laws. Why, the gentlemen say that we cannot legislate, that this convention cannot legislate and yet they are legislating every day. They are providing a code of laws for corporations here similar to what is provided in our statute. They have provided for a great many things here that are pure, simple legislation, for instance, that all the county officers of a county shall hold their office at the county seat of the county—a matter of pure legislation—no fundamental law in it. Now, coming back to this proposition that we adopt these laws by virtue of that, then I say that if the laws of Montana Territory establish the capital at Helena, and we then change that law so that it shall read "State" or "State of Montana" instead of "Territory" or "Territory of Montana", that we would establish by virtue of that provision the capital at Helena, and we would provide for that by statute. That would be a statute and we would adopt it, and that statute that we would adopt that makes the capital at Helena does not provide that it shall be a temporary capital. It provides for it there as a permanent capital. There is nothing said in the statute about its being a temporary capital whatever. Now, the gentlemen say, "Oh, but here is this very provision that you are acting upon, and that provides that the Legislature shall do a certain thing", and the gentleman from Lewis & Clarke, Mr J. K Toole, and the gentleman from Deer Lodge, Mr. Whitehill, have spoken upon that and they have shown that supposing the Legislature does not act, what will be done? The courts cannot mandamus them and compel them to act and then the plea would be made if they do not act just exactly as the gentlemen have provided here, "Why, there is no demand on the part of the people of Montana for you to act, you have not been elected upon that issue whatever; that question was not put in the platform of your county convention; you were not elected upon that" And the capital would remain here under and by virtue of that statute. We would adopt that statute in our constitution. Now. that is the position that I take in this matter, and that to strike out that proviso is just saying that we establish the capital at Helena until such time as the Legislature that shall meet in Helena and be subject to the glories and the dominion of the people of this place, shall see fit to provide a law upon this matter to be submitted to the people.

Mr. J. K. Toole, of Lewis & Clarke: Would not it be that way if you inserted any town?

Mr. Knowles, of Silver Bow: Yes sir; it would be just exactly that way.

Mr. Maginnis of Lewis & Clarke: Would it not be that way in all the Territories?

Mr. Knowles, of Silver Bow: I believe the other Territories that are acting in this manner actually provide in their constitution not only for the capital, but they are providing for all of these other institutions, deaf and dumb asylum. insane asylum, etc., and putting them all before the people to vote upon. I understand that some of them are doing it. But of course there should be a provision that that statute should provide in such a way that it would not be left to the Legislature at all to say, but that the constitution itself would provide that at a certain time, say 1892, this matter should be submitted to the people directly and not through the Legislature. But I am making an argument as to what would be the result of this matter if that proviso was stricken out. It would leave it to Helena, and leave it to Helena indefinitely, so far as the law is concerned; and that is just exactly what these gentlemen who are advocating the cause of their town so gallantly desire; and I hope that I have been understood about this matter now—that is, to strike out this proviso and leave it, and then adopt all the laws of Montana Territory by striking out the word "Territory" wherever it occurs and inserting the word "State", would leave that statute in force providing for the capital here. Now, in relation to the terms of that statute, they are not falsities, but undoubtedly the intention was to establish the capital at Helena. The statute has received that construction, and whatever might be thought now as to the wording of that statute any court in the country would say that by virtue of that statute and the construction that has been put upon it the capital was located at Helena and that that is the seat of government of the Territory, and when you strike out the word "Territory" and put in the word "State" you have located the capital permanently at Helena.

Mr. Rickards, of Silver Bow: I shall not attempt to touch on any legal aspect of the question before us. I do not feel myself competent to discuss these mandamuses and other features of the case. Several of us have heard mandamus hurled at us now until we are almost frightened out of our wits; but I do want to raise, and I think I can raise, a very pertinent question at this point of the discussion—I want to know why the constitutional convention of 1884 did ingraft in the constitution presented to the people the same proviso that we are considering here tonight, and which this amendment proposes to strike out?

Mr. Hershfield, of Lewis & Clarke: Because we were acting without authority from the United States government.

Mr. Rickards, of Silver Bow: I cannot hear you. I suppose the question might be raised that the people passed upon this. True they did, but I raise again the pertinent inquiry, if it is unconstitutional now, or if it is unnecessary now, why was it not as unconstitutional and as unnecessary then? The constitutional convention of 1884 did ingraft this same proposition, this same proviso, the only difference being that the word "Helena" was then inserted, and Helena's ox was not gored. Now, Mr. President, I think that every member of this constitutional convention understands the object of this amendment. It is simply to strike out every other amendment that has been before us and leave it just where they want it left—just where the movers of this proposition want it left—at Helena. Now, I confess to you and I confess to this body that if that is the judgment of this convention I acquiesce; but I do not think it altogether proper and right. I say this without any disrespect, I say it without any ill feeling, that this question should be raised as to whether it is the province of this constitutional convention to put in this proviso. I say if it was competent and right in 1884, it is equally competent and right to insert it here in 1889, if not, why not?

Mr. J. K. Toole, of Lewis & Clarke: I have only a word to say in addition to what I said today upon this matter. The gentleman from Silver Bow who has just taken his seat says that he thinks he understands what is intended by this amendment that it is to strike out in order that the seat of government may remain at Helena. That is exactly my understanding and I trust that there will be no mistake made by any gentleman of the convention. It is not designed as I know by the mover of this, my colleague, Mr. Maginnis, that any snap judgment is sought to be taken on any members of this convention, but that they may thoroughly understand that if this provision is stricken out that the city of Helena will remain the temporary capital of the State of Montana; and it is with this view that this proposition was presented at this time in order that we might get a final fair expression of the sentiment of this convention as between the city of Helena and the town of Missoula. What has been said, so well and plainly said, by the gentleman from Missoula, Judge Marshall, and the gentleman from Silver Bow, Judge Knowles, with respect to the authority of Congress to interfere in this matter, I do not intend at this late hour to discuss; but what matter which horn of the dilemma we take, whether we say that the Congress of the United States has not the power to impose upon the state laws which they have not recognized, or whether we say that the ordinance which we shall provide shall say that these laws shall be in force. If it is the deliberate judgment of this convention after all that has been said and done, that as between the city of Helena and the town of Missoula the city of Helena shall remain the temporary seat of government, we are not remitted to the act of Congress which imposes its legislation upon us, but by the ordinance which shall be prepared under the supervision and care and skill of the gentleman from Silver Bow, we may say that the laws of the Territory shall be in force and thereby recognized what will be the act of this convention. Now, I take it while I stand upon the general principle today and agree with Judge Whitehill that the insertion of the provision into this constitution that the Legislative Assembly shall do a certain act would be nugatory if the Legislature was disposed to disregard it—in other words, that the Judiciary Department of the government could not control the Legislature and compel us to pass a law—nevertheless I believe with my friend from Deer Lodge, Judge Whitehill, that if any Legislative Assembly should meet in this Territory or in the State of Montana to legislate under the power created by this constitution, and should openly defy public sentiment, defy a provision in this constitution that says that you shall submit this proposition to the popular will of this country, that the men who opposed it and those wilfully and deliberately violating the provisions of this constitution would bring upon themselves the condemnation of this people from which they would never rise. (Applause) There is no danger from precedent but that if we put in this a provision that the Legislative Assembly shall at its first session submit this question to the popular will, there is no danger that it will not be submitted How to obviate this difficulty and to relieve gentlemen from submitting to an authority to which they do not wish to submit, let us provide by the ordinance which shall be the last thing which shall be brought in and submitted to this convention --let us provide by that that the laws of the Territory shall be in force until they are changed by the Legislature of the State. When that is done we have covered and obviated everything.

Mr. Luce, of Gallatin· I have just one remark to make further. I do not wish to be on my feet all the time boring this convention but I take notice that the gentleman who was last upon the floor seems to have gone back upon his own selection. I take notice that the gentlemen from Lewis & Clarke County have aided almost unanimously in locating the capital temporarily at Missoula I have been in the town of Missoula I have seen that other dimple in the cheek of nature. Now, then, if the people of Lewis & Clarke County want the capital temporarily at Missoula they have voted it there, and I am willing that it should remain That is their own work and they should not undertake now in this manner to undo it They told this convention, now you have your choice between striking out this proviso and letting the capital remain in Helena or going over to the town of Missoula That is their own work, gentlemen of the convention: let it stand. Helena has only ninety-eight miles the advantage of myself I will get to Missoula and when you get there you will get into a town of good hotels, of generous people and enterprising people, and a prettier place you will not find in the Territory of Montana—except Bozeman (Laughter) That has been the deliberate judgment I say—and I appeal to the ayes and nays of this convention of the gentlemen from Lewis & Clarke—that this capital shall go temporarily to Missoula It could not go to a better place except so far as the geographical situation is concerned, but that makes but little difference, you know that the boys that get elected to the Legislature get mileage. Let the capital remain where Helena has placed it. Take Helena at her own word. I will stay with Helena. (Laughter) I have been with you Helena all day. I have the best of you. I will stay with you now.

The Chair stated the question which was on the motion of the gentleman from Lewis & Clarke (Mr. Maginnis) to strike out the proviso in Section 2.

Mr Robinson, of Deer Lodge, called for the ayes and nays on the question.

The Clerk called the roll as far as the name of Mr. Joy, of Park.

Mr. Joy, of Park· I would like to explain to the convention that my pair was not with Mr. Muth. It was based upon the understanding that he was to vote first, last and all the time for Helena for the capital while I was to vote with the same regularity and proposition for Anaconda; that was the extent of the pair that we were to vote on opposite sides. Since that time I have changed my proposition and I now desire to vote in favor of Helena. I desire to say, Mr. President, that it won't be questioned by any member of this convention that Mr. Muth if he were present would vote in favor of Helena on this proposition, and knowing that I desire to vote the same way, I feel that it would be no prejudice of faith on my part of which Mr. Muth could complain; not only that, but it would be an act that Mr. Muth would be glad to hear of; he would be satisfied, I think. He would hold me to no account for it, and certainly no other person could complain; and I ask, Mr. President, that the pair be declared off and that I be allowed to vote.

Mr. Warren, of Silver Bow: I understand that Mr. Muth also paired with another gentleman, a member of this convention. (Laughter) I object.

Mr. Maginnis, of Lewis & Clarke: The matter of pairs of course always depends upon a man's own sense of honor and feeling. The gentleman of Park has made a very proper statement of the case and if Mr. Muth has paired with any other gentleman upon this question, and the gentleman from Park is no longer paired with him, it is eminently right and proper that he should be allowed to vote.

The Clerk finished the roll call.

The vote stood as follows:

Ayes: Breen, Browne, Buford, Bullard, Burns, A. F.; Burns, A. J.; Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Craven, Eaton, Gibson, Gillette, Goddard, Graves, Hammond, Hershfield, Hobson, Joy, Joyes, Kanouse, Knippenberg, Loud, Mayger, Middleton, Myers, Parberry, Rotwitt, Toole, Jos. K.; Watson, Witter—34.

Nays: Aiken, Bickford, Brazleton, Burleigh, Burns, Edward; Callaway, Cooper, Courtney, Dixon, Durfee, Dyer, Fields, Gaylord, Hartman, Haskell, Hatch, Hickman, Hogan, Kennedy, Knowles, Kohrs, Luce, Maginnis, Marrion, Marshall, McAdow, Mitchell, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Mr. President—39.

Absent: Muth, Webster—2.

The Chair announced the vote and declared the motion to strike out lost.

Mr. Collins, of Cascade: I move we adjourn.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Cascade, Mr. Collins, and a division being called for the same was declared carried by a vote of forty in the affirmative to twenty-five in the negative.

The convention stood adjourned until Thursday, August eighth, 1889, at 10 A. M.

TWENTY-NINTH DAY.

Thursday, August 8th, 1889. Morning Session.

The convenion was called to order by the President at 10 A. M.

The Clerk called the roll.

The President: Dr. Bullard, of Jefferson, desired to be excused for the day. If there be no objection leave of absence will be granted.

The Chaplain offered prayer.

Mr. Rickards, of Silver Bow: I learned that a member of this constitutional convention met with an accident this morning which may detain him some time. I refer to Mr. Durfee of Deer Lodge County. I request that leave of absence be granted in his behalf.

The President: If there be no objection leave of absence will be granted the gentleman from Deer Lodge.

The Clerk read the journal of the previous day.

The President: The Chair would ask if the select committee appointed on the resolution offered by Mr. Bickford, of Missoula, is ready to report?

Mr. Knowles, of Silver Bow: That matter has shaped itself in such a way that the committee desire to ask for further time.

The President: If there be no objection, further time in which to report will be granted the Chairman of the committee.

Mr. Parberry, of Meagher, sent up a substitute for Section 2, Proposition No. 18.

Mr. Kennedy, of Missoula: I would say that this article that we were discussing yesterday comes up under the head of unfinished business and that the substitute of the gentleman from Meagher is not in order at this time.

The President: The Chair is not advised as to the nature of the substitute. The order of business calls for propositions and resolutions relating to the constitution.

Mr. Parberry, of Meagher: The Clerk will read the proposition for information.

Mr. Kennedy, of Missoula: I will ask the gentleman from Meagher if this is a proposition relating to a resolution to be ingrafted in the constitution? I understood the Clerk to say that it was a substitute for Section 2 of the article that we had under consideration yesterday.

The President. If it is intended that this shall be referred to a committee, it will be in order, but if it is to be considered by the convention it is not in order at the present time.

Mr. Eaton, of Park: Do I understand the Chair to rule that a substitute for Section 2 is not in order?

The President: We have not reached that point in the order of business yet The order of business now is the introduction of resolutions and propositions relating to the constitution—resolutions and propositions that are to be ingrafted in the constitution and referred to committees. If there are no propositions or resolutions to be offered the order of business will then be unfinished business. Under that head the Clerk will now read the substitute

The Clerk read as follows Strike out of Proposition No. 18, Sections 2 and 4, and insert the following as a substitute therefor to be numbered 2, and renumber Section 5 as No. 4.

The Legislative Assembly shall have no power to change or locate the seat of government of the State, but shall at its second regular session after the adoption of this constitution provide by law for submitting the question of the permanent location of the seat of government to the qualified electors of the State at a special elecion in October then next ensuing, and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said Legislative Assembly shall also provide that in case there shall be no choice of location at said election the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the State at the next general election; and until the permanent seat of government shall have been located permanently the temporary location thereof shall be and remain at the present seat of government of the Territory; but no liability shall be incurred by the State for the purchase, erection or rent of any building for temporary legislative purposes, nor shall the Legislative Assembly make any appropriations or expenditures for capital buildings or grounds until the seat of government shall have been permanently located as herein provided.

Mr J. K Toole, of Lewis & Clarke: I move the adoption of that substitute.

The motion was seconded.

The President: It is moved and seconded that the substitute for Section 2 and 4 of Proposition No. 18 offered by the gentleman from Meagher (Mr Parberry) be adopted.

Mr. Warren, of Silver Bow: I move to amend the motion by laying it on the table.

The motion was seconded

The Chair stated the motion of the gentleman from Silver Bow (Mr. Warren).

Mr. Rickards, of Silver Bow: While I am not in favor of this proposition. I do not understand it as a resolution, as I understand Mr. Parberry's motion it was to strike out Section 2 and 4 and substitute this

The President: It is an amendment to the proposition. The motion has been to lay the amendment on the table.

Mr. Warren, of Silver Bow. I would inquire of the Chair if that would carry the entire section?

The President: Yes sir.

Mr. Warren of Silver Bow. Then I withdraw the motion. I move that the consideration of this amendment be indefinitely postponed.

The motion of the gentleman from Silver Bow was seconded.

The Chair stated the motion.

Mr. Parberry, of Meagher: I suppose this matter is debatable now. I have said nothing on this subject. I was away yesterday afternoon and did not have an opportunity of hearing the different speeches that were made in the forenoon, but I think we have rolled this government wagon around long enough to get it into a place where we ought to call a halt and come to some decision. We all know very well that it is not the wish of a majority of the people of Montana that the temporary seat of government should be at the extreme western portion of the Territory --at Missoula. We all know that. The people all know it. The people of Missoula do not really expect it, but they have rolled the wagon around until they have got it into a mud hole—in mired ground I know that we have many reasons why White Sulphur Springs is a preferable place for the seat of government to many other places. But I know that the people would not locate it over there, so there is no use of mentioning them. I listened to discourses from gentlemen in regard to the beautiful fields, the clear brooks, the fragrant flowers and charming scenery of the Gallatin valley. That is all nice enough to listen to. I have heard them speak of the tall mountains capped with snow which is refreshing to the wearied eye of the hard worked legislators, nice to listen to. I heard the gentlemen speak of the merits of Silver Bow, of Butte City; and I was thinking at the time that the courts had decided that a woman was a thing and arsenical fumes had settled upon the thing and made her a beautiful thing for the legislator to look upon and therefore the temporary capital ought to be located over there. But what do the people who pay the taxes and support the government think about these things. They want them to get right down to solid business, and as a business proposition Helena certainly is the place where we ought to locate this seat of government temporarily. It is provided in that substitute that we shall not incur any expense. Now, I have not consulted a single delegate from Lewis & Clarke County in regard to that, neither have I asked a delegate from Lewis & Clarke whether they would support that measure or not; but there are great advantages to be derived from the temporary advantages of the seat of government and I take it for granted that if the delegates here in this convention assembled endorse that proposition they endorse it for the people and that there will be no expense incurred to the State in the shape of rents for office and House here during the temporary location of the government.

Mr. Rickards, of Silver Bow: Board, too? (Laughter)

Mr. Parberry, of Meagher: No, not board, just in the shape of rent. But I think it is much better to have a special election to locate the permanent seat of government. There is no swapping and trading of votes. It is of very great importance that we select the proper place and postpone it until we can build a capitol building that is in accordance with the wants, the conditions and prosperity of the State, and it ought to be postponed for some little time. So far as the little feeling that was gotten up by my friends that live a little further east yesterday in regard to the votes that were cast by the delegates from Lewis & Clarke, I have only to say that the delegates from Lewis & Clarke did just as they would have done under similar circumstances. It was a parliamentary necessity for the delegates from Lewis & Clarke to vote for Missoula. The wagon was mired in Bozeman and they could not get it away in any other way. They could not vote directly upon the temporary seat of government here and they were in the fix that the man that came home late at night drunk was not. His wife hollered out to him in a fit of bad humor "Why don't you come to bed?" And he said "Hic, wait until I can come around again." (Laughter) Now, they had to wait until it came around again. Our friends ought not to feel hard towards Lewis & Clarke at all, and I hope that we will come to some decision this morning and settle this business, and let us go home. Yesterday cost five hundred dollars That is a pretty expensive bill of fare, and while we can indulge in a little extravagance of that kind for a little while, it is not a bill that the people who pay the taxes of this Territory would like to put up for.

Mr. Knowles of Silver Bow: I would like to ask if that substitute is not so worded that there would be no expenditure even for renting purposes. Now, I should not like to have the Legislature come over here to Helena and be herded out here on the prairies. It would make a very short session of the matter, and they would elect a couple of senators and go home, and I do not think we ought to put the young State of Montana in that condition. They cannot even rent any buildings.

The Clerk read the substitute of the gentleman from Meagher (Mr. Parberry) for the information of the gentleman from Silver Bow.

Mr. J. K. Toole of Lewis & Clarke: I move to strike out of that part of it the words "but the State shall incur no liability" etc.

Mr. Warren, of Silver Bow: As I understand the substitute the motion is not in order now, and I move you that we indefinitely postpone the motion.

The President: The gentleman is wrong. The question to indefinitely postpone is of the lowest rank, and a motion to amend takes precedence, hence the motion to amend is in order.

Mr. Goddard, of Yellowstone: I do not understand why it would be proper to strike out the provision there in relation to the erection of public buildings inasmuch as I do not believe it would be possible to rent permanent buildings until the capital is definitely located. I would be in favor of striking out that portion in relation to the rent unless the gentlemen from Lewis & Clarke County will tender the Courthouse free of rent.

Mr. Bickford, of Missoula: Striking out the two words "or rent" in the latter part of the section would leave the section exactly as it should be. The intention evidently is that there should be no money paid out for buildings of a permanent nature, and by striking out the words "or rent" it leaves the section as it originally is.

Mr. Hartman, of Gallatin: I rise to a point of order on the question of the consideration of this substitute. On yesterday the city of Helena was voted down as the capital. And now the same matter is brought up only in different words—that it shall remain and be at the seat of government. The present seat of government is Helena. I understood that no play of words could possibly bring it before the convention again.

The President: It comprises matter different from the question of the capital. There are other considerations. If it involves other considerations which would make the proposition substantially different it is in order. The Clerk will read the amendment offered by the gentleman from Lewis & Clarke, Mr. J. K. Toole.

Mr. J. K. Toole, of Lewis & Clarke: I have accepted the amendment of the gentleman from Missoula, Mr. Bickford.

The Clerk read as follows: "And until the permanent seat of government shall have been located permanently, the temporary location thereof shall be and remain at the temporary seat of government of the Territory; but no liability shall be incurred by the State for the purchase or erection of any building for temporary legislative purposes."

Mr. J. R. Toole, of Deer Lodge: Is a motion to amend in order?

The President: A motion to amend is in order.

Mr. J. R. Toole, of Deer Lodge: I have an amendment which I desire to offer.

The President: The gentleman from Deer Lodge offers an amendment. The Clerk wil read the same.

The Clerk read as follows: Strike out the words "the present seat of government of the Territory" and insert the word "Anaconda."

The President: Is there a second to the motion.

Mr. Collins, of Cascade. So as to meet to a certain extent the views of the gentleman from Silver Bow, I move we postpone the matter until next Monday. We cannot postpone it indefinitely.

Mr. J. R. Toole, of Deer Lodge: Does not a motion to amend take precedence of a motion to postpone?

The President: No sir, a motion to postpone to a day certain takes precedence of a motion to amend.

The motion of the gentleman from Cascade, Mr. Collins, was seconded.

The President: It is moved and seconded that the consideration of this amendment and of all matters pertaining thereto be deferred until Monday next.

Mr. Warren, of Silver Bow: It strikes me that now this row is up, we might just as well settle it here now as to postpone it.

The President: The Chair will state the question and then the gentlemen will have the floor. The question is upon the further postponement of the consideration of this amendment and all matters pertaining thereto.

Mr. Warren of Silver Bow. As this discussion is now open it might just as well be fought to a finish. There seems to be a sentiment not only among the members of this convention but among the people of

Montana that a time has come for a change in the seat of government. There seems to be no question about that. Whether or not that seat of government goes to Missoula, Bozeman or Great Falls, I care not, but it seems to me that the matter ought to be settled here now. If it remains here in Helena that is all right, and we have no fault to find, but if you postpone it until Monday you will only renew it then, and it strikes me that we should settle it now.

Mr. J. R. Toole, of Deer Lodge: I certainly am in accord with the gentleman from Silver Bow. It is a harrassing and annoying thing to have this matter still pending, with a consequent loss of time, and perhaps a little irritation that comes in connection with it; but it seems to me that the wise policy is to settle the matter one way or the other today. Our business will be retarded to a certain extent, for this will occupy a position uppermost in the minds of the convention for the coming week, and if we dispose of it now we will go on and finish the work that we came here to do. We are in just as good position today for settling this matter as at any time. I believe the matter has been thoroughly canvassed and whatever will be the result we are willing to abide by it. It is only a temporary arrangement; it is not a permanent thing. It is a matter of generous rivalry. It is a gratifying thing that there are so many who are generous and competent rivals in the race for this temporary location of the capital. It makes no money for anybody, but it is a commendable spirit on the part of citizens who are able to lay the claims of their respective localities before the convention. Evidently the sovereign voice of the people will settle the matter, and why not go on and settle the matter today as to the temporary location of the capital and be done with it, and let all abide the result good naturedly without any feeling. I have no occasion for hard feelings. Listening to some of the remarks yesterday I was somewhat surprised and astonished that old scores were raked up that occurred twenty years ago. I say in behalf of my city that there is nothing of that kind; we have none of it. We come in on our merits only I stand here and say to this convention that if we did not have supreme and superior merits that I would not press our claims. I am willing to abide by the result of the convention, and I hope the matter will be settled today.

Mr. Bickford, of Missoula: At the commencement of the discussion relative to the temporary location of the capital I was firmly impressed with the idea that this convention should take no step tending to move the capital or its present location. I believe that the will of the people, if it could be expressed by their votes, would show that Helena should remain the capital of the Territory until it should be permanently fixed by a vote of the people themselves. Since that time there have been various motions made in regard to the capital, and by a vote of the convention the town of Helena was defeated for the temporary capital. Other towns came into the race and among them the town of Missoula was mentioned by one of our delegation. In regard to the town of Missoula I would say to those who are not acquainted with her surroundings that it is a town which now has in the neighborhood of four thousand inhabitants. It is located at a place where the capital can be conveniently taken care of for the time being at least. The location of the town is such as to render it a healthful one. It is supplied with the purest of water. The location is as pretty perhaps as the town of Bozeman mentioned by my friend yesterday in his argument in favor of that town. Not only is that true but we have all the buildings, all the conveniences necessary for entertaining the members of the Legislature and the members of the Supreme Court. All the State officers could find ample accommodations in Missoula. It is a town which will never be incompetent for the permanent location of the capital. If by a vote of this convention it is determined to place the temporary capital at the town of Missoula, the members of this convention can rest assured that when the time comes for moving the capital to some other place that the people of Missoula will join heart and hand with those who desire to move it to some more central location. We should esteem it a great honor, one of which we would be inestimably proud, if the temporary location of the capital was fixed at the town of Missoula. You start in with a location that is as good as any perhaps in the Territory Starting in at this hour of the race with other competitors out of the race I say that so far as any other town is concerned Missoula has more claims as a pleasant location and as possessing good accommodations for the capital than any other town remaining in the Territory. We believe that we could take care of the people that come there to make our laws, and a telegram has just been shown me from many of the prominent business men of Missoula which says that every facility, every courtesy will be extended if the temporary capital is located at that place. There can be no question at this stage of the proceedings but that it would be unwise to continue the discussion as has been well said by the gentleman who offered the amendment, we spent on yesterday five hundred dollars of money in discussing the question as to the temporary location of the capital. I say, sir, that we should proceed to business. We should proceed at once and finish this discussion—not delay until next Monday, not allow it to be resting upon the minds of the members of this convention to distract their minds from other and needful work, but let us proceed at once to finish up the work. Let us do it this morning, and if Missoula is the choice of this convention for the temporary location of the capitol the members of the convention and the people of the Territory of Montana can rest assured that they make no mistake when they choose the little town of Missoula. The location—everything—is as pleasant as any other town in the Territory, and while Butte and Anaconda, while Helena and Bozeman have their claims upon the people of Montana for the temporary location of the capital, this modest town has never asked anything from the Territory, has never asked anything from the government of the United States except the establishment of a military post to protect them from the Indians. This town always was loath to present any claims to the people because of the fact that it was somewhat away from the centers of population. Now, we are on the main line of travel, we are on a transcontinental route with the prospect of numerous other railroads; with the prospect that we shall be on one other transcontinental route. These prospects are such that we can speak with a degree of certainty as to their materializing in the near future. We can assure the people that they will be there almost immediately. Missoula is easy of access because it is central to every part of the western side of the Territory and is only a few miles further than Helena when one is once upon the train going to his destination. I say that Missoula has a modest claim to the temporary location of the capital. We have everything to offer and I can assure the members of this convention that we shall esteem it a very great honor if the temporary capital is located with us.

The President: The question is upon the motion to postpone until Monday.

Mr. J. R Toole, of Deer Lodge, called for the ayes and nays

The President· If there be no objection the ayes and nays will be entered on the journal. It includes that portion of the proposition regarding the capitol

The Clerk called the roll.

Mr. Cardwell of Jefferson Mr. Durfee being away requested that I should pair with him.

The vote stood as follows· Ayes—Brown, Buford, Burns, A. F.; Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Craven, Eaton, Gibson, Gillette, Graves, Hershfield, Hickman, Hobson, Joy, Joyes, Kanouse, Knippenberg, Loud, Maginnis, Mayger, Middleton, Myers, Parberry, Rotwitt, Toole, Jos. K.; Watson—30.

Nays—Aiken, Bickford, Brazleton, Breen, Burleigh, Burns, A. J ; Callaway, Courtney, Dixon, Dyer, Gaylord, Goddard, Hammond Hartman Haskell, Hatch, Hogan, Kennedy, Knowles, Kohrs, Luce, Marrion, Marshall, McAdow, Mitchell, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R ; Warren, Whitehill, Winston, Witter, Mr. President—38.

Absent—Burns, Edward, Muth, Webster—3.

Paired—Cardwell and Durfee; Fields and Bullard—4

The Chair announced the vote and declared the motion of the gentleman from Cascade (Mr. Collins) to postpone consideration of proposition No. 18 with the amendments until Monday, lost.

The President: The question now recurs on the amendment of the gentleman from Deer Lodge (Mr. J. R. Toole) to strike out the words "the present seat of government of the territory."

Mr. J. R. Toole of Deer Lodge: On that I call for ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll until the name of Mr. Fields of Park was reached.

Mr. Fields of Park: I wish to explain my position. Mr. Bullard of Jefferson is in favor of Helena and as long as Helena is not in the field in this vote I do not think I am bound by the pledge to vote in that respect. It is a vote between Anaconda and Missoula.

The President: This is a vote to strike out the temporary seat of government, which I understand is Helena, and insert in lieu thereof "Anaconda."

Mr. Fields of Park: Very well, then I will pair.

Mr. Joy of Park: In view of the understanding with Mr. Muth, I should declare to pair on this proposition

The gentleman: The gentleman considers himself paired with Mr. Muth on this question.

Mr. Rickards of Silver Bow: I would like to ask in this connection if there was not someone else who rose to his feet and announced that he was paired with Mr. Muth

Mr. Winston of Deer Lodge: There seems to be some misunderstanding about this matter Saturday morning just after the adjournment of this convention Mr. Muth asked me if I would pair with him. I told him that I thought it might not be well to pair because we might want to vote on the same proposition, and as I expected to be here and he expected to be absent, that it might not be well to do this. He telegraphed me Saturday morning and I got his telegram in the afternoon. His telegram said "Will pair with you on capital question." I telegraphed to him that I would pair with him. Yesterday morning before any vote took place Mr. Fields, who I believe will corroborate me in this statement, told me that on the depot platform at Livingston he heard Mr. Muth and Mr. Joy pair on the capitol question Of course, if he was paired with Mr. Joy he could not pair with me, and I did not know whether he got my telegram, I therefore telegraphed Mr. Joy. When he came here I asked Mr. Joy if he was paired with Mr. Muth. He said yes, he was. I told him then that I would consider myself released, and I told him Mr. Muth might not have gotten my telegram. When Mr. Joy got up and said he was paired with Mr. Muth I did not consider it was necessary for me to make any statement at all, and in view of the fact that Mr. Fields had heard this conversation between Mr. Muth and Mr. Joy I considered myself personally released.

The President: If the gentleman will allow the Chair to interrupt him I will read a telegram that may explain this matter. The telegram reads: "Livingston, August 4th. Winston pairs me on capital; Joy on legislative."

Mr. Winston of Deer Lodge: There is some mistake then, Mr. President. I want to act fairly in this matter, and have no desire to act in any other way. Mr. Muth could not pair with both, and I would not consider this paired with him. If the gentleman from Park is not paired with him I will pair with Mr. Muth. He has stated on the floor of the convention that he was paired with him. Mr. Fields will state to the convention exactly what he stated to me. I think there is a misunderstanding somewhere.

The President It seems that Mr Muth considers he is paired with Mr. Joy on the legislative question. He states that he is paired with you on the capitol question and with Mr. Joy on the legislative matter.

Mr. Winston of Deer Lodge: Mr. Joy himself stated here yesterday that he was paired with him on the capitol question.

Mr. Fields of Park: The conversation was on the platform just before he was taking the train for the Park, and the gentleman from Yellowstone (Mr. Goddard) was in our company. The conversation that I overheard was not between Mr. Joy and Mr. Muth but Mr. Muth told me that morning that he had paired with Mr. Joy, and on Sunday afternoon in conversation with Mr. Joy, Mr. Joy told me he had paired with Mr. Muth on the legislative question and also on the capitol question, and I spoke of the fact with Mr. Winston yesterday morning before his vote was brought up, and I believe between Mr. Muth and Mr. Joy it was understood that they would pair on three different questions—the legislative question, the capital question and some other questions.

The President: The question is which one of the gentlemen is paired with Mr. Muth on the capital question.

Mr Joy of Park: There seems to be some misunderstanding about this pair, one thing certain, Mr. Muth considered he was paired

The President: On all questions?

Mr. Joy of Park. No, sir, it was not definitely settled on Saturday but the suggestion was made that he pair with me on the legislative question before he left this hall. That was settled Then upon the train it was settled that he pair with me on the ditch question, and there was a conversation at that time on the train before we reached Livingston as to a pair on the capitol question. He said if he could secure a pair on the capitol question he would go to the Park; otherwise he would not, as he was interested in the capitol question and was anxious to see it left with Helena. I told him I would pair with him if he wished. He was with a party of friends and anxious to go to the Park I told him that I would see that no harm came to him. He seemed to be very grateful to me at that time and so expressed himself, and we had a talk there, and while he did not say to me in express terms, "that is settled, I will depend upon you and I will say no more about it," there was such a talk and I inferred he considered it not necessary to remind me three or four times that he would rely upon me I am satisfied now that Mr. Muth considers himself paired with either Mr. Winston or myself, and as there is some question about it I will stand here and see that no harm comes to him on account of his vote. It makes no difference in the result of the vote whether in fact he is paired with myself or with Mr Winston, and I have declined to vote upon this proposition for this reason. If the convention insists upon my voting I will cast a vote that will protect Mr. Muth's vote in his absence, as he understands it that way.

Mr Winston of Deer Lodge. I consider that I am released from my pledge then. I certainly would have paired with Mr. Muth yesterday morning had Mr Joy not told me that he was paired, and I did not know that he received my telegram. I do not know yet that he received it, and therefore I consider myself released and I hope that the convention will release me from it.

The President: If Mr Joy and Mr. Winston are not agreed and will both vote the same way, and Mr. Joy insists that he is paired with Mr. Muth, there can be no objection, as the Chair thinks, to releasing Mr. Winston, and if there be no objection it will be so considered

Mr. Joy of Park: I think I ought to state here at this time as I have heard some intimation from some members here that Mr. Muth attempted to pair with two or three different members on this proposition, that I am very well satisfied from his talk that he did not know and was uncertain whether he had secured this pair, and this talk came about in that way. The remark came up as to the uncertainty of his getting this pair, and it was settled that he was to vote for Helena all the time and that I was to offset his vote. However, I am perfectly willing that the gentleman from Deer Lodge should make that pair.

Mr Rickards of Silver Bow: I regret exceedingly, Mr President, that the question should be raised as to whether anyone questions Mr. Muth's sincerity in this matter. Now, I have known Mr. Muth a number of years and no one on this floor holds him in higher esteem or has more confidence in his integrity than I. The only reason I made this objection was simply to protect Mr. Winston.

Mr. Maginnis of Lewis & Clarke: Of course it is necessary for members to pair, but in order to avoid misunderstandings which continually arise from verbal agreements, pairs ought to be reduced to writing and filed with the Clerk.

The President: If there be no objection the gentleman from Deer Lodge (Mr Winston) will be released.

Mr. Joy of Park: Before this is decided upon, I would state that I would very much prefer that Mr. Winston should pair with Mr. Muth.

Mr. Sargent of Silver Bow: I move that Mr. Muth be considered paired with Mr. Joy and Mr. Winston be released and that we go on with this motion.

Mr President: This is simply a question of privilege and it is no doubt the object of every gentleman here to have this matter honorably and equitably settled; and if Mr. Winston has no objection to pairing with Mr. Muth, Mr. Joy will be released. Does the gentleman from Deer Lodge object to pairing with Mr. Muth?

Mr. Winston of Deer Lodge: I have no objection to pairing with him. Of course, I considered myself released when Mr. Joy paired yesterday.

I would do nothing that would injure the chances of Mr. Muth on this vote. I simply considered myself released when Mr. Joy announced that he was paired with Mr. Muth and voted so.

The President: There can be no prejudice at all in this matter, inasmuch as both of these gentlemen are in accord, and I believe the Chair in questions of division has a right to decide these matters peremptorily. There can be no motion entertained during the call of the roll, and in order to settle this matter the Chair will decide that Mr. Joy has already paired with the gentleman, and that Mr. Winston shall be released. The Clerk will proceed with the calling of the roll.

The clerk finished the call of the roll.

The vote stood as follows: Ayes—Aiken, Bickford, Brazleton, Breen, Browne, Burleigh, Burns, E.; Callaway, Courtney, Dixon, Dyer, Gaylord, Hartman, Haskell, Hatch, Hogan, Kennedy, Knowles, Kohrs, Luce, Marrion, Marshall, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Mr. President—34.

Nays—Buford, Burns, A. F.; Burns, A. J.; Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Craven, Eaton, Gibson, Gillette, Goddard, Graves, Hammond, Hobson, Hershfield, Hickman, Joyes, Kanouse, Knippenberg, Loud, Maginnis, Mayger, McAdow, Middleton, Mitchell, Myers, Parberry, Rotwitt, Toole, Jos. K.; Watson, Witter—34.

Absent—1.

Paired—Bullard and Field, Cardwell and Durfee, Joy and Muth—6.

The Chair announced the vote and declared the motion of the gentleman from Deer Lodge to insert "Anaconda" lost.

Mr. Warren of Silver Bow: I have an amendment.

The President: The gentleman from Silver Bow offers to amend by striking out "present seat of government" and inserting in lieu thereof "the city of Great Falls."

Mr. Warren of Silver Bow: I move the adoption of the substitute.

The motion was seconded.

The ayes and nays were called for on the motion of the gentleman from Silver Bow.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows: Ayes—Browne, Burleigh, Burns, E.; Collins, Courtney, Gibson, Gillette, Hatch, Hobson, Hogan, Luce, Marrion, Marshall, Mitchell, Parberry, Ramsdell, Robinson, Rotwitt, Rickards, Sargent, Schmidt, Toole, J. R.; Warren, Watson, Whitehill, Winston—26.

Nays—Aiken, Bickford, Brazleton, Breen, Buford, Burns, A. F.; Burns, A. J.; Callaway, Carpenter, Cauby, Chessman, Conrad, Cooper, Craven, Dixon, Dyer, Eaton, Gaylord, Goddard, Graves, Hartman, Hammond, Haskell, Hershfield, Hickman, Joyes, Kanouse, Kennedy, Knippenberg, Knowles, Kohrs, Loud, Maginnis, Mayger, McAdow, Middleton, Myers, Reek, Stapleton, Toole, Jos. K.; Witter, Mr. President—42.

Absent: Webster—1.

Paired: Bullard and Field, Cardwell and Durfee, Joy and Muth—6.

The Chair announced the vote and declared the motion of the gentleman from Silver Bow lost.

Mr. Goddard of Yellowstone: I wish to offer an amendment.

The President: The amendment of the gentleman from Yellowstone will be read by the Clerk.

The Clerk read as follows: Amend Section 2 by striking out the words "present seat of government" and inserting "the city of Billings."

Mr. Goddard of Yellowstone: I move the adoption of the amendment.

The motion was seconded.

The ayes and nays were called for on the motion of the gentleman from Yellowstone.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows: Ayes—Breen, Browne, Burleigh, Cooper, Courtney, Eaton, Goddard, Hatch, Hobson, Hogan, Knowles, Luce, Marrion. Marshall, McAdow, Mitchell, Myers, Ramsdell, Robinson, Rotwitt, Rickards, Sargent, Stapleton, Toole, J. R.; Warren, Watson, Whitehill, Winston—28.

Nays—Aiken, Bickford, Brazleton, Buford, Burns, A. F.; Burns, A J.; Burns, Edward; Callaway, Carpenter, Cauby, Chessman, Collins, Conrad, Craven, Dixon, Dyer, Gaylord, Gibson, Graves, Hammond, Hartman, Haskell, Hershfield, Hickman, Joyes, Kanouse, Kennedy, Kohrs, Loud, Maginnis, Mayger, Middleton, Parberry, Reek, Schmidt, Toole, Jos. K.; Witter, Mr. President—39.

Absent: Knippenberg, Webster—2.

Paired: Bullard and Field, Cardwell and Durfee, Joy and Muth—6.

The Chair announced the vote and declared the motion of the gentleman from Yellowstone lost.

Mr. Aiken of Silver Bow: I have an amendment to offer.

The President: There are two amendments already on the desk of the President.

The Clerk will read.

The Clerk read as follows: Amend by striking out the words "present seat of government" and inserting the "city of Bozeman." Offered by Mr. Luce of Gallatin.

Mr. Luce of Gallatin: I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

The ayes and nays were called for on the motion of the gentleman from Gallatin.

The President: If there be no objection the ayes and nays will be entered on the journal

The Clerk called the roll.

The vote stood as follows: Ayes—Bickford, Brazleton, Browne, Buford, Burleigh, Burns, Edward; Callaway, Cooper, Courtney, Dixon, Dyer, Eaton, Gaylord, Hartman, Hatch, Hickman, Hogan, Knowles, Kohrs, Loud, Luce, Marrion, Marshall, McAdow, Myers, Ramsdell, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston—35.

Nays—Aiken, Breen, Burns, A. F.; Burns, A. J.; Carpenter, Cauby, Chessman, Collins, Conrad, Green, Gibson, Gillette, Goddard, Graves, Hammond, Haskell, Hershfield, Hobson, Joyes, Kanouse, Maginnis, Mayger, Middleton, Mitchell, Parberry, Reek, Rotwitt, Toole, Jos. K.; Watson, Witter, Mr. President—31.

Absent: Knippenberg, Webster—2.

Paired: Bullard and Fields, Cardwell and Durfee, Joy and Muth—6.

The Chair announced the vote and declared the motion of the gentleman from Gallatin carried.

Mr. Cooper of Gallatin: I move that the substitute as amended be adopted.

The motion was seconded

Mr. J. K. Toole of Lewis & Clarke: I move to strike out all of that portion of the substitute relating to the temporary seat of government.

The President: The question is upon the adoption of the substitute as amended.

Mr. J. K. Toole of Lewis & Clarke: Is there not a motion to definitely postpone?

The President: The motion to indefinitely postpone is in order after all motions have been acted upon

Mr. J. K Toole of Lewis & Clarke: I will hold my amendment for the present.

The President: The question before the convention is upon the motion to indefinitely postpone the substitute, carrying with it the amendments.

Mr. Chessman of Lewis & Clarke called for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal

Mr. Warren of Silver Bow: With the consent of my second I withdraw my motion to indefinitely postpone.

The President: The gentleman withdraws his motion to indefinitely postpone. Does the gentleman from Lewis & Clarke desire to offer this amendment?

Mr. Conrad of Choteau: Is there not a motion before the House to postpone until Monday or to a day certain?

The President: The motion was lost.

Mr. Maginnis of Lewis & Clarke: What is the motion now?

The President: The motion now is to adopt the substitute as amended. The gentleman from Lewis & Clarke has a substitute to offer.

Mr. Hartman of Gallatin: I move that the convention do now take a recess until 2 o'clock.

The motion was seconded.

The Chair put the question on the motion of thegentleman from Gallatin, and a vote being taken, the same was declared carried.
The convention took a recess until 2 P. M..

THURSDAY, AUGUST 8th, 1889.
Afternoon Session.

The convention was called to order by the President at 2 P. M.

The Clerk called the roll.

Mr. Middleton of Custer: Mr. President, the Committee on Engrossment and Enrollment desire to report.

The President: The report of the Committee on Engrossment and Enrollment will be read.

The Clerk read as follows: Mr President, your Committee on Engrossment and Enrollment, to whom was referred Propositions Nos. 19, 28, 31 and 32, for the purpose of enrollment, beg leave to report that they have compared the enrolled copies with the originals as adopted by the convention, and find said propositions correctly enrolled.

(Signed) MIDDLETON, Chairman.

The President: If there be no objection the report will be received and adopted.

Mr. Middleton of Custer: I move you, sir, that the report of the Committee on Engrossment and Enrollment be referred to the Committee on Revision, Phraseology and Adjustment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Custer, and a vote being taken, the same was declared carried.

The report of the Committee on Schedule will be read.

The Clerk read as follows: To the Honorable President of the Constitutional Convention of the State of Montana.

Your Committee on Schedule having considered the subject, direct me to report the following articles which they ask to be made a part of the Constitution of the State of Montana.

(Signed) HIRAM KNOWLES.

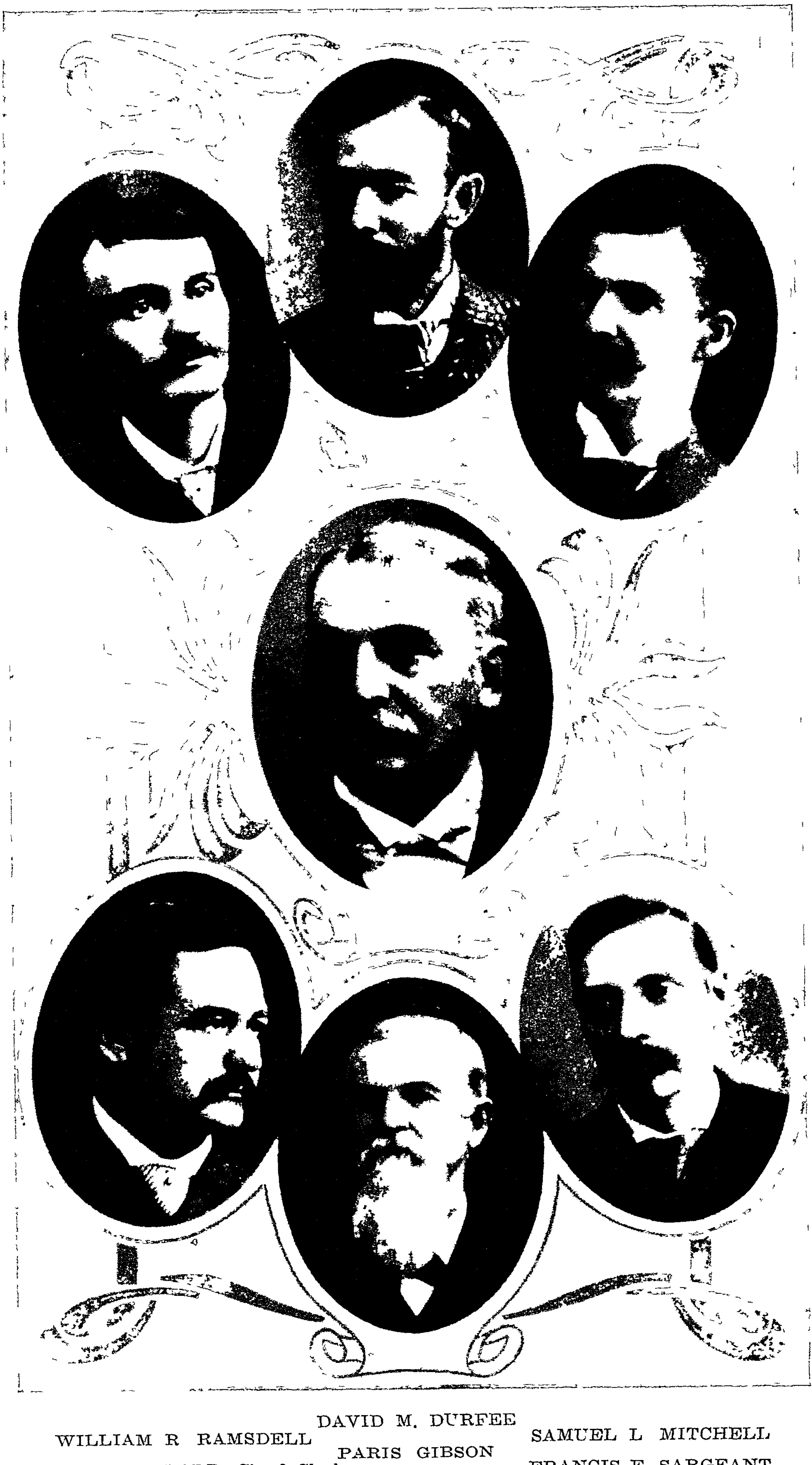
ARTICLE ON SCHEDULE.

That no inconvenience may arise by reason of changing from a territorial to a state form of government, it is declared as follows:

Section 1. All laws enacted by the Legislative Assembly of the Territory of Montana and in force at the time the state shall be admitted into the Union and not inconsistent with this Constitution or the Constitution or Laws of the United States of America, shall be and remain in full force as the laws of the state until altered or repealed or until they expire by their own limitation; Provided, that wherever in said laws the words "Territory" or "Territory of Montana" occur, the words "State" or "State of Montana" shall be appropriately substituted and read therefor. And provided further, that the duties which now by law devolve upon probate judges as jury commissioners and in relation to issuing marriage licenses and filing and recording marriage certificates and the duties as ex-officio clerks of their own courts, shall, until otherwise provided by law, devolve upon and be performed by the clerks of district courts in their respective counties. And provided further, that the duties of probate judges now imposed by law relative to townsites and to the approval of bonds of other county officers shall, until otherwise provided by law, be performed by the district judges in the several counties in their respective districts.

Section 2. All lawful orders, judgments and decrees in civil causes, all contracts and claims and all lawful convictions, judgments and sentences in criminal actions, made and entered, or pronounced by the courts within the Territory of Montana, and in force at the time the state shall be admitted into the Union, shall continue to be and remain in full force in the state unaffected in any respect by the change from a territorial to a state form of government, and may be enforced and executed under the laws of the state.

Section 3. No crime or criminal offense committed against the laws of the Territory of Montana shall abate or be in anywise affected by reason of the change from a territorial to a state form of government, but the same shall be deemed and taken to be an offense against the laws of the



DAVID M. DURFEE
WILLIAM R RAMSDELL SAMUEL L MITCHELL
PARIS GIBSON
WILLIAM H TODD, Chief Clerk FRANCIS E SARGEANT
MILTON CAUBY

state, and the appropriate courts of the state shall have jurisdiction over and to hear and determine the same. Provided, that this section shall not in anywise be construed to change the laws of the statute of limitations or the due effect or application of the same.

Section 4. Except as herein otherwise provided, the word "district" shall be substituted and read in lieu of the word "probate" in the term "probate court" or "probate judge" wherever the same occur in the laws of the Territory of Montana and all said laws which by their terms apply to probate court or probate judge shall upon a change from territorial to state government be deemed and taken to apply to district courts and district judges, provided that all laws allowing fees to probate judges are hereby repealed.

Section 5. Clerks of district courts until otherwise provided by law shall each perform the duties and be entitled to the same fees as now provided by law for clerk of the dtsirict court of the territory, and until otherwise provided by law, shall also perform the services and be entitled to fees therefor that are now provided for clerks of probate courts.

Section 6. Upon a change from a territorial to a state government the seals in use by the Supreme Court and the Territorial District Courts in and for the several counties respectively shall pass to and become, until otherwise provided by law, the seals respectively of the Supreme Court and of the District Courts of the state in such counties.

Section 7. Prosecutions for criminal offenses against the laws of the Territory of Montana, pending at the time the state shall be admitted into the Union, shall not abate, but the same shall continue and be prosecuted in the name of the State of Montana, and the title of every such action shall be changed to conform to this provision.

Section 8. Parties who, at the time of the admission of the state into the Union, may be confined under lawful commitments or otherwise lawfully held to answer for alleged violations of any of the criminal laws of the Territory of Montana, shall continue to be so confined and held until discharged therefrom by the proper courts of the state

Section 9. All writs, processes, prosecutions, causes of action, defenses, claims and rights of individuals, associations and bodies corporate existing at the time the state shall be admitted into the Union, shall continue and be respectively executed, proceeded with, determined, enforced and protected under the laws of the state.

Section 10 All undertakings, bonds, obligations and recognizances in force at the time the state shall be admitted into the Union which were executed to the Territory of Montana or any officer thereof in his official capacity or to any official board for the benefit of the Territory of Montana, are hereby respectively assigned and transferred to the State of Montana, to the state officer successor to said territorial officer, or to the official board successor to the aforesaid official board for the use of the state, as the case may be, and shall be as valid and binding as if executed under state law to the state, or state officer in his official capacity or official board for the benefit of the state, and all fines, taxes, penalties and forfeitures due or owing to the Territory of Montana, or to any county, school district or municipality therein, at the time the State shall be admitted into the Union, are hereby respectively assigned and transferred and the same shall be payable to the state, county, school district or municipality, as the case may be, and payment thereof may be enforced under the laws of the state.

Section 11 All property, real and personal, and all moneys, credits, claims, demands and choses in action of every kind, belonging to the Territory of Montana at the time the state shall have been admitted into the Union, are hereby assigned and transferred to and shall be vested in and become the property of the state.

Section 12 All obligations of the Territory of Montana, existing, in force and unpaid at the time of the admission of the state into the Union are hereby assumed by the state which shall and will well and truly pay the same.

Section 13. All matters, cases and proceedings pending in any Probate Court of the Territory of Montana, at the time the state shall be admitted to the Union, and all official records, files and other property of or pertaining to such court, are hereby transferred to the district court in and for the same county, and such district court shall have full power and jurisdiction to hear, determine and dispose of all such matters, cases and proceedings.

Section 14. All actions, cases and proceedings and matters which shall be pending in the Supreme and District Courts of Montana Territory at the time of the admission of the state into the Union whereof the United States Circuit or District Court might have had jurisdiction had such court existed at the commencement of such actions, cases, proceedings and matters, respectively, shall be transferred to said United States Circuit and District Courts, respectively; and all files, records, indictments and proceedings relating to such actions, cases, proceedings and matters shall also be transferred to said United States Courts; Provided, that no civil action, cause or proceeding to which the United States is not a party shall be transferred to either of said United States Courts except upon written request of one of the parties thereto, and in the absence of such request such cases shall be proceeded with in the proper state courts.

Section 15. All actions, cases, proceedings and matters pending in the Supreme and District Courts of the Territory of Montana at the time the state shall be admitted into the Union and all files, records and indictments relating thereto, except as otherwise provided herein, shall be appropriately transferred, as may be proper, to the Supreme and District Courts of the State, respectively, and all such actions, cases and matters shall be proceeded with in the proper state.

Section 16. Upon a change from territorial to state government and until otherwise provided by law, the great seal of the territory shall be deemed and taken to be the great seal of the State of Montana.

There being no objection, the reading of the above report was dispensed with and the same was referred to the Printing Committee to be printed.

Mr. Hickman of Madison sent up a resolution.

The President: The gentleman from Madison (Mr. Hickman) offers a resolution which, if there be no objection, will be considered now.

The Clerk read as follows: Whereas, the Senate Committee on Arid Lands will be in this House tomorrow, and whereas our citizens are deeply interested in the subject of irrigation; therefore be it resolved that the committee be and are hereby invited to visit this convention, and that the freedom of the floor is hereby granted to said committee.

Mr. Maginnis of Lewis & Clarke: I move the adoption of the resolution.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Maginnis) and a vote being taken, the same was declared carried.

The President: It will be necessary to have someone wait upon these gentlemen and extend the courtesy of the convention to them. The Chair suggests that it would be well to have a committee appointed to wait upon the Senate Committee.

Mr. Collins of Cascade: I move that the Chair appoint a committee of three.

The motion was seconded.

Mr. Bickford of Missoula: I move to amend by making it a committee of five, of which the President of this convention shall be chairman.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Missoula (Mr. Bickford) and a vote being taken, the same was declared carried.

The President: The Chair will name the committee sometime during the course of the day. The question pending before the convention was upon the amendment offered by the gentleman from Lewis & Clark to the substitute offered for Section 2.

Mr. J. K. Toole of Lewis & Clark: I withdraw that amendment.

The President: The gentleman withdraws his amendment. The question is upon the adoption of the section as amended.

Mr. Maginnis of Lewis & Clark called for the reading of the section as amended.

The President: The Clerk will read the substitute now offered for Sections 2 and 4 as amended.

The Clerk read as follows: The Legislative Assembly shall have no power to locate or change the seat of government of the state, but shall at its second regular session after the adoption of this Constitution provide by law for the submission of the question of the permanent location of the seat of government to the qualified electors of the state at a special election in October then next ensuing, and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said Legislative Assembly shall also provide that in case there shall be no choice of location at said election the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of this state at the next general election, and until the permanent seat of government shall have been located permanently the temporary location thereof shall be and remain at the city of Bozeman, but no liability shall be incurred by the state for the purchase or erection of any building for temporary legislative purposes, nor shall the Legislative Assembly make any appropriation or expenditure for capitol buildings or grounds until the seat of government shall have been permanently located as herein provided.

Mr. J. R Toole of Deer Lodge: Are amendments in order?

The President: Amendments to the substitute are in order with the exception of the name of the temporary capital.

Mr. J. R. Toole of Deer Lodge: I desire to offer an amendment to substitute the word "first" in place of the word "second" before the words "regular session"

The motion was seconded.

The Chair stated the motion.

Mr. J. R. Toole of Deer Lodge: I make that amendment for the reason that I believe it is wise and in accord with the views of most of the members of the convention. The feeling is in this convention that the legislature may meet here with the incubus of this capitol question hanging over them, and it may interfere with their work as much as it has interfered with the progress of this convention. It will determine their course of action and to a certain extent aid the proper working of the legislature if there shall be an early solution of this question of the location of the capitol. I do not think it is wise to have anything of this kind pending whereby trading or dickering or gerrymandering might come up. It certainly would be the proper course to provide that the legislature shall provide for an election as speedily as possible and throw this thing off the minds of the people.

Mr. Maginnis of Lewis & Clarke: I am glad to hear the admission of my friend from Deer Lodge that this thing does interfere with the harmonious workings of the convention and the legislature and is an incubus upon them.

Mr. J. R. Toole of Deer Lodge: An apple of discord.

Mr. Maginnis of Lewis & Clarke: Exactly, an apple of discord. Substantially the same remark that I made yesterday to which some gentleman on the floor took exception. However, I am glad to find that my friend from Deer Lodge is in accord with me.

Mr. Collins of Cascade: On this matter of permanently settling the capitol, I think the views of most of the members of this convention who live in the hills and in the mountains are rather obscure and misty. I do not believe that they have an idea of the great extent of the Territory of Montana As a matter of fact it extends beyond the municipal limits of either Butte or Helena The great State of Montana to be is about 500 miles in length by 300 miles in width, and the gentlemen who insist upon the permanent settlement of the capitol question within a year, I do not believe can realize that great fact. They cannot realize the fact that over 100 miles east of where we are sitting we are in the geographical center of Montana and that within a comparatively short space of time the population of the State of Montana east of that geographical center will be as great in number as that west of the geographical center. I sincerely and honestly believe that in the lifetime of some of the pages upon this floor that the population east of the geographical center of Montana will be greater than the population of this western country—that instead of the population of 150,000 or 200,000 , as we have today, we will have a population of two millions and upwards. I believe it is not right that in the next year or year and a half the permanent capitol should be settled in some of these mountain gulches, and if we have a big population it is only right that the people who come in here and help develop the state and populate it in the next four or five years should have a voice. The election, if held a year or a year and a half from now will possibly and in all probability decide that the capitol shall be permanently west of the Rocky Mountains. I believe sincerely that if a vote was polled today the majority of the state would locate the capitol on the West Side, and I believe the same thing would occur if the election were held at any time within the next two years. I believe in looking at the future of the great State of Montana that that would be wrong. The great populous centers in Montana in the future will be east of here, and the question of the permanent capitol may be kept off long enough to give the people a chance to decide upon it fairly. Now, sir, I am in favor of the proposition that the first Legislative Assembly shall decide where the temporary capitol shall be, and then 10 years from that date let the people decide it. That would give the temporary location a chance to build under the impetus that would be given to it as the capitol of the state for ten years. It is not right that we should shuffle this thing off after a year or sixteen months It is not right in the interests of the community that it is going to and it is not right in the interests of the whole people of Montana. If you temporarily locate your capitol four, five, six or ten years and after that locate it permanently for the whole people of the state you will be doing what I consider to be the wise thing. I believe the people of the East Side of this range, and the members who represent Helena upon this floor are making the greatest mistake in their lives when they vote upon this proposition. I do not think it is right that it should be settled within a year and a half.

Mr. Ramsdell of Missoula: I move the previous question.

The motion was seconded.

The President: The question now before the convention is shall the main question be now put.

Mr. Ramsdell of Missoula: I withdraw my motion.

The President: The gentleman withdraws the motion.

Mr. Rickards of Silver Bow: May I ask as a matter of privilege to say just a word or two, not to advance argument at all I feel, Mr. President and gentlemen of the convention, that I owe it to myself to make an explanation of how and why I shall vote as I do upon this proposition. As I have said before on this floor, I always try to maintain a consistent course, and although I may not always appear to do so to the other members of the convention, I do so, so far as I know my own conscience The other members of this committee who reported this proposition that we have been considering for a day or two will remember that it was at my suggestion and on my motion that we provided that this question of the permanent location of the capitol of Montana should be taken in hand by the Legislative Assembly at its third annual session after the adoption of this constitution. I believed then as I believe now that when it comes to the permanent location of the capitol that every citizen of Montana should be actuated by none other than the most patriotic motives, and I believe that when it comes to the settlement of that question that the primary object before all of the intelligent voters of this commonwealth will be, "Where can we locate the capitol to best accommodate the populous districts of Montana?" Now, while I do not wish to appear to reflect upon what my friend has just said, if I thought then as now sectionalism would show itself, I would depreciate it then as I do now. But I rise—and pardon me if I seem to put myself on a plane above the remark as indicated by my friend—I put myself upon a plane above that of the East Side, West Side, North Side or South Side. Those questions cut no figure with me in the question of the permanent location of the capitol of Montana. I believe, however, with the gentleman that the time is not ripe and will not be one year from now, nor two years from now, for the settlement of this question. Therefore as a compromise measure, I shall vote for this amendment, and I would have been glad if our original proposition could have passed this body, but that has been voted down, and I shall vote for an adoption of the amendment, believing as I do, that the best interests, not, Mr. President, of Butte City, not the best interests of Missoula County, not the best interests of Lewis & Clarke county, but the best interests of Montana will be subserved by putting this question off until we see where the populous districts are going to be, and then you and I and every other citizen of Montana can vote intelligently upon the proposition.

The President: The Chair would suggest that the gentleman probably had some misapprehension as to the amendment. The amendment is to strike out two and insert one.

Mr. Rickards of Silver Bow: Then I shall vote against that proposition.

Mr. Burleigh of Custer: Do I understand that this is to be decided by a special election?

The President: Yes, sir.

Mr Burleigh of Custer: I move now to strike our "special" and insert "general."

The President· The question now is with reference to striking out "second" and inserting "first"

Mr Burleigh of Custer· Well, now, Mr. President, I have to say that is a compromise measure, I shall vote for it, although I agree with the gentleman from Cascade County that it is too early in the history of the development of the territory to permanently fix the capitol, and yet I am aware that while it will not embarrass the legislature as intimated, yet it will retard the construction of permanent buildings for the accommodation of the legislature and for state officers, and as I said before while I think it is too soon to locate the capitol of the territory, and perhaps will be for the next eight or ten years, I would much rather, were it not for the inconvenience I have spoken of, see the first legislature provide, or a second legislature porvide for the temporary location of the capitol, and see the permanent location deferred for another day. But as I said before, with the exception of calling a special election for that purpose and substituting a "general election," I shall vote for the amendment.

Mr. Robinson of Deer Lodge: I do not know how this proposition stands, but this convention voted upon that proposition yesterday and determined after considerable argument on the proposition that the election should be held at the first general election after the first legislature. Now, then, it seems we are to vote on the same proposition again, and if it will be tolerated and allowed to be done there is no end to the changes and the resubmission of it to this convention, time and again in the same shape. While the balance of the substitute is different from what is proposed, it seems to me this part of it is in direct contradiction of what this convention has already determined This convention decided by a large majority that the vote on the capitol question should be at the first general election after the first Legislative Assembly, and I do not see any reason for changing it.

The President The Chair would suggest to the gentleman that the object now of making this amendment is to bring it in conformity with the amendment as passed yesterday. The motion is now to strike out "second" and insert "first."

Mr Robinson of Deer Lodge: The original bill as it came from the committee was that at the third session of the Legislature they should provide for submitting it That was amended yesterday in this convention by striking out the word "third" and inserting "first."

The President: But this substitute contains the word "two," and the friends of the proposition who submitted it at the first election desire to have this stricken out in order to conform with their views established yesterday.

Mr. Kennedy of Missoula: I wish to say to the gentlemen of this convention that the question of striking out yesterday referred to a general election, and the substitute refers to a special election. So it is entirely a different proposition.

Mr. Robinson of Deer Lodge. Be all that as it may, I do not see why we should put this "second" or "third" any more than we should put it "fourth," "fifth" or "tenth" If we are to wait until the population of the state finally settles down to some particulaar place in the future, I do not see why we should put the "tenth" instead of the "second" or "third"; but we are acting upon the present condition. I do not see why we should not act upon that all the way through and get the permanent capitol located as soon as we reasonably can. I do not see any reason for deferring it as long as proposed by some of our friends, and I do not see why it should not be settled with reasonable certainty and settled as soon as possible. I am opposed to any such amendment, and I trust it will not prevail, but leave it where the convention put it by its vote yesterday.

Mr Collins of Cascade I call for the ayes and nays on the motion

The President. If there be no objection the ayes and nays will be entered on the journal The question is upon the adoption of the amendment to strike out "second" and insert in lieu thereof "first".

The Clerk called the roll.

The vote stood as follows.

Ayes: Aiken, Bickford, Brazleton, Breen, Burns, E.; Callaway, Cauby, Courtney, Dyer, Graves, Haskell, Hartman, Hatch, Hogan, Kennedy, Kohrs, Luce, Marrion, Marshall, Mitchell, Ramsdell, Robinson, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Mr. President—30.

Nays: Browne, Buford, Burleigh, Burns, A. F.; Burns, A. J., Cardwell, Carpenter, Chessman, Collins, Conrad, Cooper, Craven, Dixon, Durfee, Eaton, Fields, Gaylord, Gibson, Gillette, Goddard, Hammond, Hershfield, Hickman, Hobson, Joy, Joyes, Kanouse, Knowles, Maginnis, Mayger, McAdow, Middleton, Myers, Parberry, Reek, Rotwitt, Rickards, Toole, Jos. K.; Watson, Witter—40.

Absent: Bullard, Knippenberg, Muth, Webster—4.

The Chair announced the vote and declared the motion of the gentleman from Deer Lodge lost.

Mr. Rotwitt of Meagher sent up an amendment.

The President: The amendment of the gentleman from Meagher is in order.

Mr. Warren of Silver Bow: The gentleman from Deer Lodge, Mr Durfee, met with an accident this morning, and I would ask that some gentleman of the opposition on this capital matter pair with him.

The President: The gentleman from Deer Lodge County, Mr. Durfee, who sustained a serious accident this morning, desires to ask any member on the opposite side of the question to kindly and generously pair with him.

Mr. Cauby, of Lewis & Clarke: I will pair with the gentleman.

The President: Mr. Cauby who votes that the capital shall remain at Helena has generously offered to pair with Mr. Durfee.

Mr. Warren of Silver Bow: On all questions relating to the capital?

Mr. Cauby of Lewis & Clarke: On all questions relating to the location of the capital; yes, sir.

The President: On all questions pertaining to the locating of the capital Mr. Durfee and Mr. Cauby will both be excused if there be no objection. The question is now upon the adoption of the substitute as amended.

Mr. J. K. Toole, of Lewis & Clarke: The motion pending now as I understand it is upon the adoption of the substitute as amended having the word "Bozeman" inserted?

The President: That is the motion pending before the convention.

Mr. J. K. Toole of Lewis & Clarke: Is it not in order now to move to strike out a portion of the substitute?

The President: If the gentleman will put it in writing and send his motion to the desk the Chair will resolve upon that question.

Mr. Parberry of Meagher: I would like to ask the Chair if the motion of the gentleman from Meagher (Mr. Rotwitt) is in order?

The President: That motion to strike out Bozeman and substitute is not in order. The gentleman from Lewis & Clarke moves to strike out something else.

The Clerk read for information the amendment offered by the gentleman from Lewis & Clarke, as follows: Strike out the following in the substitute: "And until the remaining seat of government shall have been located permanently the temporary location thereof shall be and remain at Bozeman, but no liability shall be incurred by the State for the purchase or erection of any building for temporary purposes" Also strike out the following: "Nor shall the Legislative Assembly make any" and in insert the following "the Legislative Assembly shall make no".

The President: The Clerk will now read the substitute as it would be if this amendment is adopted.

Mr. Robinson of Deer Lodge: I ask for a division of the two propositions.

The President: The Chair desires to have it read now as amended and then the Chair will entertain the gentleman's suggestion

The Clerk read as follows: The Legislative Assembly shall have no power to change or locate the seat of government of the State but shall at its second regular session after the adoption of this constitution provide by law for submitting the question of the permanent location of the seat of government to the qualified electors of the State at a special election in October then next ensuing, and a majority of all votes upon said question cast at said election shall be necessary to determine the location thereof. Said Legislative Assembly shall also provide that in case there shall be no choice of location at said election the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the State at the next general election. The Legislative Assembly shall make no appropriation or expenditures for capital buildings or grounds until the seat of government shall have been permanently located as herein provided.

Mr. Whitehill of Deer Lodge: Is an amendment in order now?

The President: If the gentleman will send up his amendment the Chair will decide.

Mr. Whitehill of Deer Lodge: I move to strike out the word "special" and insert in lieu thereof the word "general".

Mr. Myers of Yellowstone: I sent up an amendment to that effect previous to Mr. Toole's amendment having been sent.

The President: The amendment is offered by the gentleman from Meagher, the Chair decided, was out of order. The Chair overlooked the amendment offered by the gentleman from Yellowstone: This amendment is in order The gentleman from Deer Lodge desires to have the proposition divided. The Clerk will read that portion and we will decide that part first, and then the motion of the gentleman from Yellowstone will be in order.

Mr. Kennedy of Missoula: I do not think that the amendment offered by the gentleman from Yellowstone is in order. There are already two amendments pending upon that section. The first is the substitute offered by the gentleman from Meagher County, and the second amendment offered by the gentleman from Lewis & Clarke County to the substitute.

The President: That is very true, and as it does not conflict with the amendment of the gentleman from Lewis & Clarke, the Chair would ask the privilege of submitting it first. It was overlooked by the Chair when sent up by the gentleman from Yellowstone. This is simply with reference to the election. Mr. Toole's amendment was with reference to the Legislature which should provide or submit the question. The substitute reads. "At a special election in October then next ensuing" and this amendment reads to insert instead "At the first general election". The question is now upon the adoption of the amendment which, I believe, has been moved and seconded.

Mr. Middleton, of Custer: It seems to me that is not in order. That identical proposition has been voted down.

The President: The Chair understands that the motion to amend offered by the gentleman from Deer Lodge was with reference to the session of the Legislature which should submit it. This has reference to the election which shall decide the question.

Mr. Parberry of Meagher: I would ask if that proposition of Mr. Toole's of Deer Lodge to change from the "second" to the "first" was lost?

The President: Yes sir.

Mr. Myers of Yellowstone: The object of that resolution is to submit the permanent location to the qualified voters of the State of Montana at a general election instead of at a special election.

Mr. Eaton of Park: I am opposed to the amendment offered. I believe that when the question of the permanent location of the capital of the State of Montana shall be submitted to the voters thereof for their decision on the question that the question should be presented upon its merits without any extraneous influences whatever entering into the question Certainly if that question is put before the voters of Montana at the time of a general election when a member or members of Congress are to be voted for, and other state officers, all of those questions will enter into it and will cut a large figure in the votes to be polled on the capital question Now, I believe on a proposition of so much importance to the people of Montana it should be submitted to them at a time when they will, of necessity, vote upon that question and none other, and therefore I think it should be submitted at a special election; and feeling in that way I shall vote against the amendment.

Mr. Whitehill of Deer Lodge: I am in favor of the other proposition. I cannot see the necessity of this Territory going to the extra expense of an election for that purpose alone. It has been found by experience that where questions of this kind are submitted aside from the general elections, that only those particular parties who are very greatly interested will give any attention to it. The towns which are aspirants for capital honors will be the ones that will exert themselves. For instance, where a town has a large amount of influence and another has not, the one with a great influence will have a great deal better advantage for securing the capital than the town with but little influence; and I am sure that when the names of the different places are placed upon the tickets every voter who votes will see the names there and have an opportunity to vote; and in that way the town with but little influence which is an aspirant for the capital will secure a better vote. In the other way, I say that the vote will be unfair. And then there is the additional expense. It will certainly cost $25,000 or $30,000 to have a special election and there is nothing that I can see to be gained by having a special election. In California they at one time held the judicial elections at a different time from the general elections, and it was the experience there after one election that they desired to have the elections for judicial officers returned to the time for general elections for the reasons that I have stated, that they could not get out at a special election one-half of the people of California to vote for judges, and only the interested parties would come out and vote. So for those reasons I am in favor of having this election held at the time that the general elections are held throughout the Territory.

Mr. Luce of Gallatin: I want to call the attention of the convention to Section 2, Proposition No. 14. It has been adopted and considered in Committee of the Whole. I undertook to get the matter before the convention and was shut off by a gentleman from Deer Lodge. It reads as follows: "Every male person of the age of twenty-one years or over possessing the following qualifications shall be entitled to vote at all general elections." Now, sir, it has always been admitted among all lawyers and everybody else upon this subject that the right of suffrage is not a natural or inherent right; that is a grant of the sovereign power; in other words, when the people of Montana vote upon this suffrage proposition they make these very persons whose ages are defined here electors, and they have only the authority to vote at general elections. Now, if this capital should go down to Bozeman—if lightning should strike us in that direction—why, if the word "special" was in there until this constitution was changed, we would have it there forever, because I venture to say it as necessary as I think it is that the sovereign power of this State should define the ages of those that are called electors, they are bound by this limitation in this constitution. It has been adopted. how we are to get back at it is more than I know, but as it stands now the Legislature of Montana can never grant any further rights. It is the right of the sovereign; it is the right of the people of Montana to make electors. We have made them here and limited their right to vote, to general elections. Consequently I say that if you vote for permanent location of the capital as our constitution now stands, it must be at a general election and not at a special one.

Mr. Goddard of Yellowstone: The gentleman is entirely wrong upon that proposition, so far as it relates to this question. I agree with him that the qualifications specified in this bill refer only to general elections, but all special elections are provided for by the Legislature, and whenever the Legislature calls a special election, or appoints a special election for any purpose it invariably provides for the qualifications of the electors. So that when the Legislature would submit this proposition to the people by an act of the Legislative Assembly it would undoubtedly as it has always done in every other case, define the qualifications of the voters who shall vote upon that proposition.

Mr. Luce of Gallatin: Can the Legislature go further than the constitutional convention?

Mr. Goddard of Yellowstone: No, sir; the Legislature cannot go outside of the power that is granted by this constitution, but this constitution in fixing the qualifications of the voters fix them for general elections. Now, if this constitution provides that this question shall be submitted by the Legslature at a special election, then when the Legislature, as I said before, submits it at a special election it will fix the qualifications of the voters who shall vote upon that proposition. Now, as to the question of expediency or propriety in voting upon this proposition at a general or special election, I only have this to say, that I do not believe this question should be submitted to the people at a general election, for the reason that if it is, all of these populous cities and these large mining camps—that is, those that are candidates for the permanent location of the capital—will wish for influence just in order to carry the election for their particular place, and to do that every man upon the State ticket, upon the county ticket, upon the precinct ticket, will be swept off for votes for the permanent location of the capital. So that I doubt whether any man would be elected on any ticket under an arrangement of that kind. They would swap the ticket. It is a dangerous thing. In other words, it would defeat the will of the people insofar as the election of the State, the county and the precinct officers is concerned. The whole matter would hinge simply upon the proposition of the location of the capital, because, I take it, that the candidate for the location of the capital would sooner see the whole State ticket slaughtered than lose that proposition. and I am in favor of submitting it at a special election, and if it is necessary in order to corner the proposition which the gentleman has read, I am in favor of putting the proposition in this amendment here allowing the Legislature or directing the Legislature, if you please, to fix the qualifications of the voters when they vote upon that proposition when submitted at a special election.

Mr. Rickards of Silver Bow: I have just one word to add in connection with what has already been said. We have heard from time to time on this floor a great deal of stress laid upon the necessity of economy. Now, it does seem to me that while we have a registration system and the Australian system of voting, assuming that they will be proven to be beneficial and the electors of the State want to retain them, I do not see any reason why, when it comes to submitting this proposition to the vote of the people, it should not be submitted at a general election. If it shall be submitted at a special election under this system of voting, there would be an expense attached to that proposition amounting to I do not know how many thousands of dollars, possibly $50,000 or $100,000. I have seen the statement made that in certain counties the Australian system of voting will increase the cost of an election from five to ten or twelve thousand dollars and that does not take into consideration at all the system of registration. So that I believe it is better the way it is in the original proposition that it shall be at a general election and not at a special election called for that purpose alone. Therefore, I shall vote for what I believe is right.

Mr. Knowles of Silver Bow: There is one matter that I wish to call attention to. The history of the contests for the location of capitals has shown that there is a great deal of fraudulent voting in such contests. The cases in the law books are numerous upon this point in the cases of changing the location of county seats and capitals. Now, if we put in that "at a special election" there will be any amount of this fraudulent voting—stuffing of ballot boxes, etc, but if you make it at a general election then the officers and candidates who are looking out for the general election will see to it that there is nothing of that kind. They will not submit to having the returns of an election tampered with. For that reason, I think it ought to be at a general election. There is another thing, too, that I wish to say This question of location of the capital has not, so far as I know, except to a very limited extent affected the general result at general elections. To some limited extent the question has affected the vote but to no great extent, but a gentleman was telling me yesterday of a vote to change I think the county seat in some county in Kansas where there were seven thousand fraudulent votes in one town at a special election. I believe it is better to put it at a general election where all of the safeguards that can be thrown around the election will pertain to it. Then there is another question; the gentleman from Yellowstone County says that when they provide for a special election the Legislature would prescribe the qualifications of the voters at that special election. I believe the Legislature can do that, but then will come up the proposition as to whether or not that Legislature shall submit that question to all of the voters of the Territory or simply to the taxpayers. There will be a vote over such questions as that Now, I believe it should be submitted to all the citizens of the Territory and not to the taxpayers alone, and that this matter should not be left to the Legislature to wrangle over the subject of the capital.

The Chair put the question on the motion of the gentleman from Yellowstone (Mr Myers) to strike out "special" and insert "general", and a vote being taken the same was declared carried.

The President· The motion now is upon the amendment of the gentleman from Lewis & Clarke (Mr. Toole). A division has been called for and the Clerk will read it as it is proposed to be divided by the gentleman from Deer Lodge

Mr. J. K. Toole of Lewis & Clarke: I rise to make a preliminary inquiry. If this substitute is adopted in lieu of the section that has Bozeman in it, will the section then be subject to amendment?

The President: If the substitute is adopted in lieu of the original section?

Mr. J. K. Toole of Lewis & Clarke: Yes, sir.

The President: Certainly it will be subject to amendment. It will not be subject to amendment by changing the name of the town at all unless there was a reconsideration of the vote. There should be other features to it that should be subject to amendment, but that portion of it would not be subject to amendment without a reconsideration of the vote.

The Clerk read the first subdivision of the amendment of the gentleman from Lewis & Clarke (Mr. Toole) as follows: Strike out the following in the substitute "and until the permanent seat of government shall have been located permanently, the temporary location thereof shall be and remain at Bozeman, but no liability shall be incurred by the State for the purchase or erection of any building for temporary purposes."

The Clerk also read the second subdivision of the same amendment as follows: Strike out the following "nor shall the Legislative Assembly make any" and insert the following "The Legislative Assembly shall make no."

Mr. Hartman of Gallatin: I move that the consideration of the amendment offered by the gentleman from Lewis & Clarke be postponed indefinitely.

The motion was seconded.

The Chair stated the motion.

Mr. Aiken of Silver Bow: Does that carry the substitute with it?

The President: It has no reference to the substitute. The question before the convention is upon the adoption of the amendment offered by the gentleman from Lewis & Clarke. It is an amendment to the substitute. The motion of the gentleman from Gallatin is to indefinitely postpone the amendment offered by the gentleman from Lewis & Clarke. The question now is upon the motion to indefinitely postpone the amendment.

Mr. Robinson, of Deer Lodge: I call for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

Mr. J. K. Toole of Lewis & Clarke: I would like a moment to state the effect of this amendment so that the convention may understand the proposition as it now stands. The substitute is pending and its adoption has been moved by Mr. Cooper of Gallatin County whereby the temporary seat of government goes to Bozeman. I have offered an amendment which strikes out of that substitute that section of it relating to the temporary location of the seat of government, which would leave it just exactly where it is now. It might be from what has been said here by the gentleman upon the floor last evening or yesterday that some provision would be required to be placed in the ordinance in order to give it force and effect; but at all events the postponement of the proposition indefinitely that I have submitted would leave simply the question of the adoption of the proposition providing for a location of the temporary seat of government at Bozeman. I therefore trust that the friends of the present location will vote against it.

Mr. Luce of Gallatin: If I understand this, it is to strike out that part of the section by which we voted this morning to have a temporary seat of government at the city of Bozeman. Now, sir, I rise to a point of order. I think that after the convention has voted to adopt the amendment that I offered this morning a motion to strike out is now out of order.

The President: The Chair would state to the gentleman from Gallatin that a motion to strike out the word Bozeman would not be in order without a motion to reconsider, but this involves other questions and other matter which makes it a different proposition, and that the motion to strike out the proviso is in order.

Mr. Luce of Gallatin: I want to understand the question fully. If this motion of the gentleman from Lewis & Clarke prevails it is equivalent to the establishment of the temporary seat of government at Helena?

Mr. J. K. Toole of Lewis & Clarke: That is correct as I understand it. The question would still remain as between Helena and Missoula.

The President: The question now is upon the motion to indefinitely postpone.

Mr. Maginnis of Lewis & Clarke: As my colleague has stated, if his amendment should prevail it would leave the question still pending between Helena and Missoula

Mr. Luce of Gallatin: I understand we are voting on the motion of the gentleman from Gallatin to indefinitely postpone the amendment now offered.

Mr. Aiken of Silver Bow: I would make the motion to indefinitely postpone the amendment and substitute both.

The President· The motion is not in order. The Clerk will read the roll and the ayes and nays will be entered on the journal on the motion of the gentleman from Gallatin (Mr. Hartman) to indefinitely postpone the consideration of the amendment offered by the gentleman from Lewis & Clarke (Mr Toole).

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Bickford, Brazleton, Buford, Burleigh, Burns, E.; Cooper, Courtney, Dixon, Hammond, Hartman, Haskell, Hatch, Hickman, Hogan, Kennedy, Knowles, Kohrs, Loud, Luce, Marrion, Marshall, McAdow, Middleton, Mitchell, Myers, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Witter, Mr. President—39.

Nays: Breen, Burns, A. F., Burns, A. J.; Browne, Callaway, Cardwell, Carpenter, Chessman, Collins, Conrad, Craven, Eaton, Fields, Gaylord, Gibson, Gillette, Goddard, Graves, Hershfield, Hobson, Joy, Joyes, Kanouse, Maginnis, Mayger, Parberry, Rotwitt, Toole, Jos. K.; Watson—29.

Absent. Bullard, Muth, Webster—3.

Paired: Cauby and Durfee, Dyer and Knippenberg—4.

The Chair announced the vote and declared the motion to indefinitely postpone carried.

The President: The question is now upon the adoption of the substitute.

The ayes and nays were called for on the adoption of the substitute.

The President: If there be no objection, the ayes and nays will be entered on the journal.

The Clerk will read the substitute.

The Clerk read as follows: Substitute for Sections 2 and 4. Strike out Sections 2 and 4 of Proposition No 18 and insert the following as a substitute therefor, to be No. 2, and renumber Section 5 as No. 4. The Legislative Assembly shall have no power to change or locate the seat of government of the State, but shall at its second regular session after the adoption of this constitution provide by law for submitting the question of the permanent location of the seat of government to the qualified electors of the State at the first general election, and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said Legislative Assembly shall also provide that in case there shall be no choice of location at said election the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the State at the general election. And until the permanent seat of government shall have been located permanently the temporary location thereof shall be and remain at the city of Bozeman; but no liability shall be incurred by the State for the purchase or erection of any building for temporary legislative purposes, nor shall the Legislative Assembly make any appropriation or expenditure for capital buildings or grounds until the seat of government shall have been permanently located as herein provided.

Mr Maginnis of Lewis & Clarke: I rise to a preliminary inquiry. This substitute is moved for the original section?

The President: For Sections 2 and 4.

Mr. Maginnis of Lewis & Clarke· For which Missoula is now inserted?

The President. The adoption of this substitute as read substitutes Bozeman for Missoula.

Mr. Rickards of Silver Bow· I understand a while ago that there was a motion or amendment carried by which the word "first" was stricken out and the word "second" substituted.

The President. That motion did not prevail.

Mr. Burleigh of Custer: Upon the adoption of this substitute I demand the previous question

The President The previous question has been demanded.

Mr. Robinson of Deer Lodge: There is another substitute there, I understand. It is to substitute the words "Deer Lodge" for "Bozeman".

The President: It is not in order without a recommendation of the vote. The word "Bozeman" has already been adopted as an amendment to the substitute. That cannot be changed without a reconsideration The question before the convention is, shall the motion be now put?

The Chair put the question, and a vote being taken the came was declared carried.

Mr. Rickards of Silver Bow: I ask simply for information. We are voting upon the adoption of the substitute as offered by Dr. Parberry, as I understand it?

The President: Yes, sir.

Mr. Rickards of Silver Bow: And if that should carry it eliminates Sections 2 and 4 of the original proposition?

Mr. Collins of Cascade: It makes Bozeman the temporary capital.

Mr. Watson of Fergus: I would like to ask for information. It seems to me that some of us are getting "between the devil and the deep sea", I would like to know what the result of this vote is to be?

The President: We are now voting on the substitute offered by the gentleman from Meagher (Dr. Parberry) which has been amended. The effect of the adoption of this substitute will be to strike out Sections 2 and 4 and insert this substitute in lieu thereof.

Mr. Watson of Fergus: What I want to get at is this: I understand the result of this vote will be a decision as between Bozeman and Missoula.

The President: That would be the effect of it. It strikes out "Missoula" and inserts "Bozeman".

Mr. Watson of Fergus: If you do not want to vote for either what will you do? (Laughter and applause in the galleries.)

The Clerk called the roll on the adoption of the substitute of the gentleman from Meagher (Mr. Parberry) for Sections 2 and 4, and the vote stood as follows:

Ayes: Buford, Burleigh, Burns, E.; Callaway, Cardwell, Cooper, Courtney, Dixon, Eaton, Hammond, Hartman, Haskell, Hickman, Kanouse. Loud, Luce, McAdow, Middleton, Myers, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Mr. President—26.

Nays: Aiken, Bickford, Brazleton, Breen, Browne, Burns, A. F.; Burns, A. J.; Carpenter, Chessman, Collins, Conrad, Craven, Gaylord, Gibson, Gillette, Goddard, Graves, Hatch, Hershfield, Hobson, Hogan, Joyes, Kennedy, Kohrs, Knowles, Maginnis, Marrion, Marshall, Mayger, Mitchell, Parberry, Ramsdell, Reek, Robinson, Rotwitt, Rickards, Sargent, Toole, Jos. K.; Watson, Witter—40.

Absent: Webster—1.

Paired: Bullard and Fields, Cauby and Durfee, Dyer and Knippenberg, Joy and Muth—8.

The Chair announced the vote and declared the motion to adopt the substitute lost.

Mr. Robinson of Deer Lodge: I now move to amend by inserting the words "Deer Lodge".

The President: The question cannot be reached except by reconsideration.

Mr. Kennedy of Fergus: I move a reconsideration of the vote by which Section No. 2 was lost.

The motion was seconded.

The President: The gentleman from Fergus offers a motion to reconsider the vote by which the proviso in Section 2 of Proposition No. 18 was lost. There was a motion before the convention yesterday to strike out the proviso in the ninth line of Section 2, which was lost. The gentleman now moves to reconsider the vote by which that proviso was lost.

Mr. Kennedy of Missoula: I rise to a point of order. The gentleman who has moved for the reconsideration voted in the negative.

The President: The gentleman must be mistaken; the Clerk informs the Chair that the gentleman voted in the affirmative, and the gentleman has therefore a right to move to reconsider. The proviso beginning in line nine of Section 2 reads, "Provided that until the seat of government shall be permanently located as herein provided the temporary location thereof shall be and remain in the city of Missoula."

Mr. Bickford of Missoula: I move that the motion to reconsider be laid on the table.

The motion was seconded.

Mr Warren of Silver Bow: I move to amend that it be indefinitely postponed.

Mr. Bickford of Missoula: I accept the amendment.

The President: A motion to indefinitely postpone is not in order. The question now is upon the motion to reconsider the vote by which the motion to strike out the proviso was lost.

Mr. Rickards of Sillver Bow: Would not a motion to lay on the table be in order?

The President It is in order, but it would have the effect of carrying the section with it

Mr. Hogan of Silver Bow I rise for information. If this motion prevails it adopts the section and fixes the capital at Missoula?

The President: Yes sir.

Mr. Hogan of Silver Bow There is a motion made to reconsider the motion by which part of this section was stricken out. Now, if this is carried you claim it will take the section with it?

The President This is a motion to reconsider the vote, and a motion to reconsider would not carry the section with it. The Chair was in error.

Mr. J R Toole of Deer Lodge. Then I move to lay the motion to reconsider upon the table

The motion was seconded.

The President: There is a motion pending before the convention to lay upon the table the motion to reconsider the vote by which the proviso was lost. The ayes and nays are demanded on the last motion.

Mr. Breen of Jefferson. I would like to ask where the capital is now and what effect this motion is going to have upon it. (Laughter)

The President: The Chair would state to the gentleman that the section as adopted provides that the capital shall be at Missoula. Now, there was a motion by a gentleman from Lewis & Clarke last night to strike out the proviso beginning in line nine of Section 2. That would leave the capital at Helena, but that motion was lost. The motion now is to lay the motion to reconsider upon the table, and the ayes and nays will be entered on the journal

The Clerk called the roll

The vote stood as follows:

Ayes: Aiken, Bickford, Brazleton, Breen, Burleigh, Burns, Edward: Callaway, Courtney, Dixon, Gaylord, Hartman, Haskell, Hatch, Hogan, Kennedy, Kohrs, Luce, Marrion, Marshall, Mitchell, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R., Warren, Whitehill, Winston, Witter, Mr President—33.

Nays: Browne, Buford, Burns, A. F.; Burns, A J; Cardwell, Carpenter, Chessman, Collins, Conrad, Cooper, Craven, Eaton, Gibson, Gillette, Goddard, Graves, Hammond, Hershfield, Hickman, Hobson, Joyes, Kanouse, Loud, Maginnis, Mayger, McAdow, Middleton, Myers, Parberry, Rotwitt, Toole, Jos. K.; Watson—32.

Absent: Webster—1

Paired. Bullard and Fields, Cauby and Durfee, Joy and Muth, Dyer and Knippenberg—8.

The Chair announced the vote and declared the motion to lay on the table carried.

Mr. Marshall of Missoula: I move that Section 2 as amended be adopted.

The motion was seconded.

The Chair stated the motion.

Mr Kanouse of Meagher I move to amend Section 2

The President: The gentleman from Meagher moves to amend Section 2 by a substitute. The Clerk will read

The Clerk read as follows. Substitute for Section 2 After the admission of the State into the Union and at the general election of the year 1892, the question of permanent location of the seat of government as hereby provided be submitted to the qualified electors of the State, and the majority of all the votes upon said question shall determine the location thereof. In case there shall be no choice of location at said election the question of choice between the places for which the highest number of votes shall have been cast shall be and is hereby submitted in like manner to the qualified electors at the next general election thereafter.

Mr. Warren of Silver Bow: I move that the consideration of that substitute be indefinitely postponed.

The motion was seconded.

The Chair stated the motion.

The ayes and nays were called for on the motion of the gentleman from Silver Bow.

Mr. Collins of Cascade: I suggest this is in the shape of an amendment. and that the motion to indefinitely postpone is not in order.

The President: The question is not upon the substitute but upon the motion to amend. The motion to postpone the substitute is in order.

Mr Collins of Cascade: It is in the shape of a motion to amend the original section, and a motion to amend has preference of a motion to postpone.

The President: Where there is a motion to indefinitely postpone a question, a motion to amend the main question takes precedence of it. This question is moved upon the amendment itself.

Mr. Maginnis of Lewis & Clarke: Is this substitute upon the amendment?

The President: Yes sir.

Mr. Warren of Silver Bow: Then I withdraw my motion to indefinitely postpone and submit the following amendment to the amendment offered by the gentleman from Meagher.

The Clerk read the amendment of the gentleman from Silver Bow as follows: Provided that until the seat of government shall be permanently located as herein provided the temporary location thereof shall be and remain in Section 2 of Township 4 North of Range 11 West of the Principal Meridian of Montana.

Mr. Warren of Silver Bow: I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

Mr. Warren of Silver Bow: In connection to that matter I would state that this is the section upon which the city of Anaconda is located.

Mr. Robinson of Deer Lodge: I move to amend that amendment by inserting another in lieu.

The President: There is one amendment offered now.

Mr. Warren of Silver Bow: In order that the matter may come up squarely I move to strike out that section and range and put in the word "Anaconda".

Mr. Burleigh of Custer: Upon the adoption of this amendment I demand the previous question.

The President: The question now is upon the adoption of the amendment offered by the gentleman from Silver Bow: Upon this the previous question is demanded. The question now before the convention is, shall the main question be now put?

Mr. Burleigh of Custer: I call for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk commenced the call of the roll.

Mr. Burleigh of Custer: I withdraw the demand for the ayes and nays.

The President: The question then is, shall the main question be now put?

The Chair put the question on the main question, and a vote being taken, the same was declared carried.

The President: The question now is upon the amendment without debate.

Mr. Burleigh of Custer: I call for the ayes and nays.

The President: The ayes and nays have been demanded and will be entered on the journal. This is upon the amendment offered by the gentleman from Silver Bow.

Mr. Mayger of Lewis & Clarke: I call for the reading of the amendment.

The President: We are voting on the amendment to the substitute. The Clerk will read the substitute and then the amendment.

The Clerk read the substitute offered by the gentleman from Meagher (Mr. Kanouse) as follows: Substitute for Section 2 after the admission of the State into the Union and at the general election in the year 1892 the question of permanent location of the seat of government is hereby provided to be submitted to the qualified electors of the State, and the majority of all the votes upon said question shall determine the location thereof. In case there shall be no choice of location at said election the question of choice between the two places for which the highest number of votes shall have been cast shall be and is hereby submitted in like manner to the qualified electors at the next general election thereafter.

The Clerk also read the amendment of the gentleman from Silver Bow to said substitute as follows: Provided that until the seat of government shall be permanently located as herein provided the temporary location thereof shall be and remain at the city of Anaconda.

Mr. Parberry of Meagher: I would like to offer an amendment to that amendment.

The President: It is not in order: This is an amendment to an amendment. The Clerk will call the roll.

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Bickford, Brazleton, Breen, Browne, Burleigh, Burns, E.; Callaway, Cardwell, Courtney, Dixon, Hartman, Haskell, Hatch, Hogan, Joyes, Kennedy, Knowles, Kohrs, Marrion, Marshall, Mitchell, Parberry, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Witter, Mr President—36.

Nays: Buford, Burns, A. F; Burns, A. J.; Carpenter, Chessman, Collins, Conrad, Cooper, Craven, Eaton, Gaylord, Gibson, Gillette, Goddard, Graves, Hammond, Hershfield, Hickman, Hobson, Kanouse, Loud, Luce, Maginnis, Mayger, McAdow, Middleton, Myers, Rotwitt, Toole, Jos K.; Watson—30.

Absent: Webster—1.

Paired: Bullard and Fields, Cauby and Durfee, Dyer and Knippenberg, Joy and Muth—8.

The Chair announced the vote and declared to motion to amend carried.

Mr J. R. Toole of Deer Lodge: I move you that the vote last taken be reconsidered and a motion to reconsider laid on the table.

The motion was seconded.

The President: It is moved and seconded that the vote by which the amendment offered by the gentleman from Silver Bow was adopted and the motion to reconsider be laid upon the table

Mr. Maginnis of Lewis & Clarke: On that I call for the ayes and nays.

Mr. Parberry of Meagher: I desire to ask if the motion to amend is now in order?

The President: The motion to reconsider takes precedence The question now is to lay upon the table the vote by which the amendment of the gentleman from Silver Bow was adopted The ayes and nays have been demanded. The Clerk will call the roll.

The Clerk called the roll

The vote stood as follows:

Ayes: Aiken, Bickford, Brazleton, Breen, Burleigh, Burns, E. Callaway, Courtney, Dixon, Gaylord, Hartman, Haskell, Hatch, Hogan, Kennedy, Knowles, Kohrs, Marrion, Marshall, Mitchell, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R; Warren, Whitehill, Winston, Witter, Mr. President—33.

Nays: Browne, Buford, Burns, A. F.; Burns, A. J; Cardwell, Carpenter, Chessman, Collins, Conrad, Cooper, Craven, Eaton, Gibson, Gillette, Goddard, Graves, Hammond, Hershfield, Hickman, Hobson, Joyes, Kanouse, Loud, Luce, Maginnis, Mayger, McAdow, Middleton, Myers, Parberry, Rotwitt, Toole, J. K; Watson—33.

Absent: Webster—1.

Paired: Bullard and Fields, Cauby and Durfee, Dyer and Knippenberg, Joy and Muth—8.

The Chair announced the vote and declared the motion to lay on the table lost.

The President: The Chair has an amendment that was sent up previously by Mr. Hershfield. There is also an amendment offered by Mr. Robinson of Deer Lodge which comes next. And there are also two other amendments. Mr. Hershfield of Lewis & Clarke moves to amend the amendment by striking out the word "Anaconda" and inserting in lieu thereof "White Sulphur Springs".

Mr. Marshall of Missoula: Was the previous question adopted?

The President: We are voting upon the amendment The previous question was adopted, but not on the substitute. The amendment can only be reached by a reconsideration, as it has been adopted once, and hence it may be reconsidered. but not today. The vote now by which "Anaconda" was adopted can only be reached by reconsideration.

Mr. Rickards of Silver Bow: I move that the section as amended be adopted.

Mr. Maginnis of Lewis & Clarke: I believe I have a motion pending.

The President: The question really before the convention is upon the reconsideration of the vote by which this was adopted.

Mr. Maginnis of Lewis & Clarke: Does the reconsideration shut out all other amendments sluch as "White Sulphur Springs"?

The President: It may be reached by a vote to reconsider, so as to give this gentleman a chance to get the names of their towns in. It is moved and seconded to reconsider the vote by which the amendment offered by the gentleman from Silver Bow was adopted.

Mr. Rickards of Silver Bow: I would like to ask who is the mover of this motion

The President: The gentleman from Deer Lodge first moved it and then moved to lay upon the table, which motion did not prevail.

Mr. Rickards of Silver Bow: I understand the motion of the gentleman from Lewis & Clarke is a reconsideration, and I raise the question as to whether the gentleman from Lewis & Clarke voted with the majority.

Mr. Maginnis of Lewis & Clarke: I did not.

Mr. Cardwell of Jefferson: I move to reconsider.

The motion was seconded.

The President: The gentleman from Jefferson moves to reconsider the vote.

Mr. J. K. Toole of Lewis & Clarke: I call for the ayes and nays

The President: If there be no objection the ayes and nays will be called and entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Breen, Browne, Buford, Burns, A. F.; Burns, A. J; Cardwell, Carpenter, Chessman, Collins, Conrad, Cooper, Craven, Eaton, Gillette, Gibson, Goddard, Graves, Hammond, Hershfield, Hickman, Hobson, Joyes, Kanouse, Loud, Luce, Maginnis, Mayger, McAdow, Myers, Middleton, Parberry, Rotwitt, Toole, J. K.; Watson—34.

Nays: Aiken, Bickford, Brazleton, Burleigh, Burns, Edward; Callaway, Courtney, Dixon, Gaylord, Hartman, Haskell, Hatch, Hogan, Kennedy, Knowles, Kohrs, Marrion, Marshall, Mitchell, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Witter, Mr. President—32.

Absent: Webster—1.

Paired: Bullard and Fields, Cauby and Durfee, Dyer and Knippenberg, Joy and Muth—8.

The Chair announced the vote and declared the motion to reconsider carried.

The President: A motion to amend is now in order. There is an amendment offered by the gentleman from Lewis & Clarke (Mr. Hershfield). The Chair would state that the motion to reconsider leaves the main question precisely as it stood before the amendment of the gentleman from Silver Bow was adopted, but is now subject to amendment. The gentleman from Lewis & Clarke (Mr. Hershfield) moves to amend by striking out "Anaconda" and inserting "White Sulphur Springs."

Mr. Hershfield of Lewis & Clarke I would like to say a few words with reference to the locality, that it is a good healthful town, located in the geographical center of the State of Montana. It is noted for its beautiful scenery, clever and moral people, and there is an abundance of water—which some of the gentlemen upon this floor object to. With all it is a very desirable place for the future capitol of the State of Montana, both temporary and permanent, by reason of its central location, and I do not know that the convention could make a mistake in selecting White Sulphur Springs as the future capital of the Territory of Montana, as also of the State of Montana.

Mr. Middleton of Custer: I would like to ask the gentleman whether he has any town lots there for sale

Mr. Hershfield of Lewis & Clarke: I have not any for sale there yet, but I will have if the capitol is located there

Mr. Maginnis of Lewis & Clarke: I rise to a point of order. The gentleman from Silver Bow offered a proviso which contained the name of Anaconda. That was voted in. My point of order is that the whole proviso goes out, and the question now is just as it was when offered by the gentleman from Meagher (Mr. Kanouse).

The President: The question to reconsider the vote by which it was adopted leaves the question precisely where it was before. The gentleman is correct. The motion to reconsider the vote by which the Marrion amendment was adopted having prevailed, leaves the amendment before the convention to be disposed of. The motion is just precisely as it was offered without being voted upon. The question now before the convention is upon the adoption of the amendment offered by the gentleman from Silver Bow (Mr. Warren).

Mr. Kanouse of Meagher: I move, sir, that the amendment offered by the gentleman from Silver Bow be made a special order for eight o'clock this evening.

The motion was seconded.

The Chair stated the motion.

Mr. Maginnis of Lewis & Clarke: Let us have another night session here. I am told the reporters here, some of them have to sit up until four o'clock in the morning.

Mr. Warren of Silver Bow: I move to amend by making it a special order for ten o'clock tomorrow morning.

Mr. Kanouse of Meagher: I accept the amendment of the gentleman from Silver Bow.

Mr. Burleigh of Custer: I suggest to my friend that we have not had a night session here yet, if we are to get through this season we have got to have several night sessions.

Mr. Maginnis of Lewis & Clarke: If the gentleman had taken my advice we would have saved two or three days on this proposition.

The President: The question now is upon the amendment offered by the gentleman from Silver Bow (Mr. Warren), which was accepted by the gentleman from Meagher (Mr. Kanouse) to make this a special order for ten o'clock tomorrow morning.

The ayes and nays were demanded on said motion.

The President: If there is no objection the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows: Ayes—Browne, Buford, Burns, A. F.; Burns, A. J.; Callaway, Cardwell, Carpenter, Chessman, Collins, Conrad, Craven, Eaton, Gibson, Gillette, Graves, Hershfield, Hickman, Hobson, Joyes, Kanouse, Maginnis, Mayger, McAdow, Parberry, Reek; Rotwitt, Toole, Jos. K., Witter, Mr. President—29.

Nays—Aiken, Bickford, Brazleton, Breen, Burleigh, Burns, Edward; Cooper, Courtney, Dixon, Gaylord, Goddard, Hammond, Hartman, Haskell, Hatch, Hogan, Kennedy, Knowles, Kohrs, Luce, Marrion, Marshall, Middleton, Mitchell, Myers, Ramsdell, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, Jos. K., Warren, Watson, Winston, Whitehill—36.

Absent: Loud and Webster—2.

Paired: Bullard and Fields, Cauby and Durfee, Dyer and Knippenberg, Joy and Muth—8.

The Chair announced the vote and declared the motion to make the amendment of the gentleman from Silver Bow a special order for ten o'clock the following morning lost.

Mr. Eaton of Park: I move we take a recess until eight o'clock this evening.

The motion was seconded.

The Chair stated the motion.

The President: The Chair desires, if this motion should be carried, to announce a committee and also to have a telegram read.

The Chair put the question on the motion of the gentleman from Park, and a vote being taken, the same was declared lost.

Mr. Maginnis of Lewis & Clarke: I move that the convention do now adjourn.

The motion was seconded.

The Chair stated the motion.

The President. The Chair will read the names of the committee empowered to wait upon the said Irrigation Committee and will then put the motion. This is a committee of five to co-operate with the President of the Convention for the purpose of waiting upon the Senatorial Irrigation Committee and to extend to them the privileges of this floor. The Committee is as follows: Maginnis, Bickford, Conrad, Kohrs and Hobson.

The Chair also desires to have a telegram from the President of the Constitutional Convention at Boise City, Idaho, read.

The Clerk read as follows: Boise City, Idaho, August 8th, President of the Constitutional Convention, Helena, Montana: The Idaho Constitutional Convention before adjournment ordered its congratulations to be sent to the Constitutional Conventions of Washington, Montana, and North and South Dakota on the progress the people of the entire Northwest are making toward early statehood. Idaho is now prepared to present itself before Congress simultaneously with its sister territories and ask for admission into the Union of States, being fully able to support a state government and posssed of unlimited natural resurces. We ask for your friendly assistance and cooperation in obtaining a speedy release from territorial dependence. (Signed) GEORGE L. SHOUP, Governor.
W. H. CLAGGETT, President.

Mr. Burleigh of Custer: I think, Mr. President, at the rate of progress we are making it would be well to remind them that we have to help ourselves before we can help them.

Mr. Cooper of Gallatin: I move the President be instructed to send a proper response to the telegram.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Gallatin (Mr. Cooper), and a vote being taken, the same was declared carried.

The President: The question now before the convention is upon adjournment.

The Chair put the question on the motion to adjourn, and a division being called for, the same was declared carried by a vote of 33 in the affirmative to 29 in the negative.

The convention stood adjourned until Friday, August 9th, 1889, at 10 A. M.

THIRTIETH DAY.

Friday, August 9th, 1889. Morning Session.

The convention was called to order by the President at 10 A. M.

The Clerk called the roll.

The Chaplain offered prayer.

The Clerk read the journal of the previous day.

Mr. Bickford of Missoula: I rise to a question of privilege. I would state that on the day before yesterday I introduced a resolution signed by the members from Missoula County. I now desire, with the consent of the convention, to withdraw that resolution and to ask that the Clerk will read the portion of the editorial which I have marked here in the newspaper.

The President: If there be no objection this will be allowed: The Clerk read as follows: In an article printed in the Journal on Wednesday it was intimated that the votes of the Missoula delegation of the Constitutional Convention were cast upon the question of senatorial representation under an arrangement. This suggestion deeply and properly offended the Missoula members, and they united in offering a resolution denying to the Journal the privileges of the floor. This action was taken without any previous conversation with the editor of the Journal, and without giving him the opporeunity to offer a voluntary expression of regret for what was unquestionably a mistaken and unjust remark. It was impressed upon the members of the delegation that a fairer and certainly a more kindly course to have taken would have been to assume that there was some mistake about the matter which the Journal would be glad to rectify were the facts in the case only brought to its editor's attention. This view was no sooner suggested to the members of Missoula than they offered to withdraw the resolution, and, were informed, they endeavored to do so yesterday morning, but for some reason, parliamentary or otherwise, it is still pending. The Journal, however, claims to be a fair and honorable newspaper, and it does not conceive itself to be relieved from any of the obligations under which honorable men rest and are supposed to rest, in their relations with one another. It is entirely satisfied that the offending paragraph did an injustice to the gentlemen from Missoula, and it would be untrue to its conceptions of the right did it permit itself to allow another day to pass without conveying to the public, to the convention and especially to the members from Missoula its sincere regret for the appearance of the erroneous report. It will not wait, therefore, for the resolution to be withdrawn.

Mr Bickford of Missoula: I desire to say that we wish, so far as the Missoula delegation is concerned, to meeting the gentleman representing this paper upon the plan which they have laid down, and desire to withdraw the resolution because we feel that the paragraph just read by the Clerk is a full and complete retraction of the imputation which was placed upon the Missoula delegation. We do not wish to wage the warfare any further than is necessary, and in order to justify ourselves and place ourselves in the proper light before this convention and the people of Montana, I ask consent of the convention to withdraw the resolution.

The President: The gentleman asks unanimous consent of the convention to withdraw the resolution in relation to the article that appeared in the Helena Journal. If there be no objection the resolution will be allowed to be withdrawn.

Mr. J. K. Toole of Lewis & Clarke: I desire to call the attention of the members of the convention to the fact that the members of the Senate Committee on Irrigation are here, accompanied by the director of the Geological Survey, Professor Powell, and I desire to offer the following resolution:

The Clerk read as follows: Whereas the Senate Committee to investigate and report upon the arid lands of the northwest, composed of distinguished gentlemen in public life, accompanied by the Director of the Geological Survey, are in the city, and by a resolution have been invited to visit this convention; therefore, be it resolved, as a further mark of respect and courtesy on our part, that the gentlemen comprising said committee and the Director of the Geological Survey be and they are hereby invited to address this convention upon the subject of irrigation and generally upon matters affecting the interests of the Northwest; and that a committee of three be appointed to escort the gentlemen to the convention, and that the convention take a recess for thirty minutes.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The President: The convention will now take a recess for thirty minutes, say at eleven o'clock. at which time the convention will be called to order again. The Chair will appoint as members of the committee Mr. Toole, Mr. Marshall and Mr. Callaway.

The convention took a recess at 10:30 A M.

The convention was called to order at 10:45 A M.

The President The Chair desires to state to the members of the convention that it has been suggested to him and he has acted upon that suggestion, that in order to save time the convention be called to order. We are to have the pleasure of listening to some of the distinguished gentlemen who are now visiting us, and I now have the honor of introducing to you Senator Stewart of Nevada. (Applause).

Senator William M Stewart of Nevada spoke as follows:

Senator Stewart: Mr President, and Gentlemen of the Convention, this is a most interesting occasion—interesting in many respects. You are one of the brightest of four new states that are about to enter the Union. The importance of this movement can hardly be realized by anybody except yourselves Other sections of the country which have been ably represented and their wants attended to through a series of years can hardly appreciate the importance of representation from your new and growing state. The Committee on Irrigation is charged with the duty of ascertaining such facts as they can in regard to this subject, for the purpose of laying it before the Senate. The subject of irrigation, although the oldest mode of agriculture, is not understood or appreciated by the people of our race. Our ancestors came from northern Europe, where irrigation was not practiced in the time of the early emigrants to this country and has not been practiced until quite recently. Irrigation has been practiced more and more in Europe every year for the purpose of moistening the land where it is necessary in order to obtain moisture, and the irrigation dependent upon the rainfall is comparatively modern. At the time the Roman Empire was in power and governed the world, those portions of Europe where the rainfall was sufficient to raise crops were in comparative barbarism; they had cultivated the crops but very little Men first sought the desert, and the deserts have many advantages. More than two-thirds of all the people who pursue agriculture now, and perhaps three-fourths, irrigate their land and are required to. There never was any agriculture in Egypt except by irrigation, and they practiced irrigation in Italy and Spain and Austria and throughout the Turkish Empire and most of the Russian Empire; China and India and the islands that were inhabited about the coast there, and in South America and in part of our own country—Arizona, where people flourished by agriculture in early times. And what is very remarkable, the early history of all these countries furnished us a lesson which can hardly be found elsewhere. It was supposed that the pyramids furnished the greatest example of the engineering skill of the ancients. It is now known that the engineering skill of the ancients in constructing irrigation works was equal to anything that can be done in modern times. In Egypt they found a principle of dykes used in regulating gates of masonry that were supposed to have been constructed 3600 years ago. They placed a great dyke in the Nile that connects with a basin 250 miles wide, and around it were found the remains of pottery and other things showing it had been occupied and used. It is probable that many of these works were in their prime at the time Egypt was the granary of the world; and in Palestine that is one of the problems that have puzzled men. Many people have told me that Palestine and Nevada were precisely the same kind of country. We did not know that anything could be done with Nevada at that time and it was always a matter of surprise that there could be a great people there. Professor Marsh solved the problem. He traveled over there and at every step found irrigation. Sometimes they found tanks on the side of the mountains that are still in a state of preservation. And it is so of Persia and so of India; in India, however, they kept up their irrigation. In some parts of India they have a great deal of rainfall, but very little of it comes at the right season so that they can raise crops. All the small streams of India are well cared for. The mountains of India are dotted all over with reservoirs, each farmer storing the water for himself. The map of India is a perfect picture in that respect. But they were not able to deal with large rivers in modern times. Some say they did not in very ancient times, and the English in building found that that would not do. They could not utilize the country and they commenced irrigating. The first estimate was $115,000,000 for that purpose. They have spent now two or three times that amount—I have not the exact figure—and the government retains the water and sells it at a very low rate. The estimate was to make it pay four and a half per cent on the money. They say that they are paying up the entire interest on the bonds with it, and still the country is filling up and becoming very prosperous. Now, without going further into that, and let me say that British India has 800,000 square miles. We have in this country 1,200,000 square miles of the same kind of country. By the way, in 1873 I introduced a bill which was passed providing for a commission to examine San Joaquin Valley of California. Land in it now is very valuable where irrigation is extended. Some is not irrigated yet, but all will be. Land connected with it is worth from fifty to two hundred or three hundred dollars an acre without any other improvements, while land with water—and the land and the water, by the way, should always be kept together, brings much higher prices. Well, they made a report upon that, and they had associated with them a Mr Breerton who had been surveying in India for a long time, and he furnished some maps and gave a great deal of information in regard to it. He had traveled for a good many times across the continent here and was a mining man also and had been through the country considerably, and he contended all the time that this country is precisely the same kind of a country that India was. I think he went to the Treasury Department and to the Government and got them to send Prof. Davidson, who had been one of these commissioners, and he went to India and came back and made elaborate report of what England had done, and he also was profoundly impressed with a similar idea of the country, and particularly with a large tract of country below a certain range of mountains that is entirely similar to the country between Canada and the Mexican line, three or four hundred miles wide east of the Rocky Mountains. There they had attempted, as here, to farm without irrigation, but the natives were never able to handle these rivers to an advantage. In England they had gone to work to handle them to an advantage—spent a large amount of money on the country where there is rainfall enough some years, and they had a great many bad years. He said that the country that we reclaimed and got good crops from every year was entirely similar to that. There they have their mountain ranges the same as we have here, where irrigation is much easier Well, now, in order to utilize this country and make it available it is necessary for the country to know what it is. Now, what is the arid region? All that is west of the 100th meridian is certainly a portion of it, and some that is east of the 100th meridian In Dakota they require irrigation very much. They did not hardly admit it to themselves until recently. They are all now satisfied that they must avail themselves of every means to increase the water supply. Now, here is an area one-third larger than British India. We do not expect to put 350,000,000 of people on it because we do not want to crowd the people on the land, but there is no doubt that the arid region of the United States will produce as much very nearly, and perhaps more than the humid region where they have plenty of rainfall. An acre of land irrigated, according to the testimony we have taken carefully, estimated by men in your territory here, and confirmed by what we have seen everywhere, an acre of land will produce very nearly as much as the very best land in the east in a year of very good crops—of two acres of the very best land in the east in the year of good crops. It will produce on the average nearly twice as much. Somebody put it at four or five times, but I think an acre of land well irrigated is worth two acres of the best land that is not irrigated, and then you have no bad crops. You are sure of a good crop every year, and that is why they have such an enormous population in the arid country Now, in Ceylon, which now has only 2,000,000 of people, the history of irrigation is wonderful. We have a pretty authentic history of that country for about two hundred years before the commencement of the Christian era Every sovereign on that land vied with his predecessor for about 1500 years in producing irrigation, and they raised a population there to between fifteen and twenty millions. The historians have been examining that and are perfectly astonished at the facts that they find; but they find that all the water was practically saved They had then war and were invaded and the irrigation works were cut and destroyed about 500 years ago, and that is one of the reasons why ancient people disappeared. But war was most fatal to them without the telegraph and without our modern means of transportation, because if they depended upon irrigation and invading armies came into their country it would be their destruction We do not think we will meet with that calamity, but that accounts for the disappearance of many of the ancient nations. The invading army was very destructive, and until you ascertain how they lived you can hardly comprehend how they could be destroyed in such large numbers by invasion Now, this country is different from what it is in the Atlantic States The government is not going to build reservoirs and irrigate this country We have not discussed such a proposition—the proposition of making appropriation for erecting irrigating works. That is another proposition altogether But what we now propose to do by appropriations that have already been made—one made at the first session of the last Congress, and one at the second session, the first session appropriated $100,000 for the purpose of investigation and surveys, and the second session $200,000, and there was to be a reservation in the first law of all the places that were to be required for reservoirs and ditches and for hydraulic works The reservation in the last act extended beyond that and perhaps too far It would require further legislation in order to enable people to acquire land. As you are well aware, the settler cannot go in one of those valleys where there are 100,000 or 10,000 or 5,000 acres of land to be irrigated by one stream and locate a homestead and stay on it He must first get the water, and to get the water on a large scale requires capital and combination But before either will proceed at all, a survey is necessary. Now, I know plenty of people that live right along the foot of the mountains, and know nothing about what they contain. I have been called upon to litigate with regard to water rights I have suggested to parties before they spend any money litigating they had better go up in the mountains and see if they could not get more water. They would find lakes there and little dams and the people would all be supplied. It would cost in many instances a good deal less than the litigation in courts. As I say, I find people living right in the valleys that knew little about the mountains. Indeed, there is a peculiarity and some of the witnesses that we have met in our investigation have mentioned it, and I mention it because it will be called to mind by every old prospector, if he will think about it—he may not have thought about it at the time, but if he will think about it he will remember that on the ridges of all the mountains throughout this country, however abrupt or perpendicular they have looked, you will find near the summit flats and swamps and lakes discharging their narrow gorges, where a slight dam will keep back a large amount of water. But the emigrant goes through—and you not having found it out in thirty years the emigrant is not going to find it out and determine what is to be done. Now, Congress has established the principle that it will survey the public lands for the benefit of settlers so that it can be made available. Now, what is proposed is to have these mountain ranges and the lines of ditches indicated, because they must indicate the line of ditch if they are going to segregate the land that can be irrigated from the other land—and the reservoirs surveyed and located and an estimate sufficiently accurate for general purposes of the probable cost. Then, you will find through this country innumerable places that you do not think anything about now, where the water can be cheaply put upon the land. When that is done we think that the people will flow into these cheap places at first and they will be made available. Then, when we come to handle the larger rivers and deal with the greater subject, that is a matter of after consideration. Now, too, the American people when they find that they have got a home for 100,000,000 or 150,000,000 of people where they can live and enjoy themselves and raise crops with certainty, and that it is a healthful country, and has many advantages, and it is the only place that the future population can go to—when the American people realize that fact there is enough genius in our country to utilize it without impoverishing the country and without violating any principles of government. Undoubtedly you will find new problems of government in this question. It has been suggested and it has been discussed a good deal in various sections that they must have local government. That has been the result everywhere. There has to be some local government to regulate the water and properly distribute it. Now, here water is the principle thing. Land is the incident, so far as land is concerned, and the water laws that England has adopted—that is the English courts said that it is best for the people that the water should flow in the stream; they wanted to keep it clean for fishing and sporting and drainage was rather more necessary than irrigation, and consequently they adopted certain rules making them keep the water in the streams, and they would not let it be diverted at all. But even in England that is all changed and modified. The rivers are all used there for sewers and other things, and it had to be changed even there But England when it made this proposition that you had to confront was not hampered by this common law at all. They first appointed a commission to see when they had got to take hold of it, and when there was a failure among the railroads and they continued to have those famines they sent a commission to examine the laws in relation to water which had been distributed in ancient times in ancient Rome—collect the laws and examine them and make a report. Then they took hold of the question in a very able way. They declared that all the waters of India were to be controlled by the government. They declared that, and then they passed an easy law for condemnation and regulation of the water. That was more arbitrary than we could do probably, but we have got to reach the result. If the water is to be used by the community, and the water is the principle thing, we ought to start in at once with our faces firmly set against any person owning the land to sell. That should be the leading principle in every movement, that the man with such land should have the right to the water—not the right that somebody else will control, but he should have an interest and property right in the water. That can be very well arranged, because if it is not you will have a country of lords and barons and plebeians very soon. But that you will control by your local government. You will work it out and you will find out that the common law is after all simply a system of principles to be applied to the facts as they are developed. It is not true that the common law consists of immemorial usages. We are making common law every day. You have got a common law system governing your mining actions that the Supreme Court of the United States is bound to adopt. As courts adopt and confirm your rights, they accept it, and no genius of man could have invented such a system as grew up by experience starting in California and spreading all over the territory. You are going to apply the facts as they exist to the common law which, properly understood, means that there shall be such administration of the law, such application of the facts as they exist in the different localities, as will inure to the greatest good of the people. That is the way the common law started and changes and grows Why, every railroad contractor and every steamboat engineer and every railroad engineer is making common law. You will have a whole system of common law in regard to the railroads and in regard to the telephone. We have no difficulty in applying it to those principles. We decide what a man must reasonably do in order to promote the greatest good—what the interests of the country require. We do not want to go to Europe for facts when we come here. That will be worked out by local government. Now, all that this committee want is to get the facts as far as we can claim them as we travel through the country, and we want those having facts here, we want them to come before the committee and make a statement. We expect your surveyors, etc., will give us the general facts. We cannot go into much detail because we want to go into all the arid country. The detail will come with the surveys You will have a section of country surveyed and you will see whether it is worth dealing with, so as not to mislead the people. No people ought to be brought into this country in the belief that they can farm without irrigation. I have seen some very cruel examples of that—not being prepared for the new situation from arid lands. The new situation, although it requires experience, and we have not been taught in it, is not an embarrassing one when we understand it. If the people had come from the Pacific and occupied this country, the Atlantic Coast states would probably have been a wilderness today, because ordinarily it costs less to bring a farm here in the arid region—it costs much less to bring a farm under cultivation than it did to clear the land along the Atlantic coast Our honest ancestors had a very hard time, and if they had come here they would have found it much easier. They would have stuck to the country where they could be sure of crops every year. But take the stranger and put him in a new situation which seems to him impossible—and people who pass along the railroad and with an unpractical eye, they pronounce it a desert, they think there is nothing to be seen along the line of the Northern Pacific railroad, whereas it goes through one of the most magnificent countries in the world. The eastern part of Montana is a most magnificent domain. It has its rivers; its soil is fertile; the climate is superb; the latitude is not high. You have the most luxuriant grass for stock, and when the land that can be cultivated is brought under cultivation and you feed your stock in winter and fatten them besides so as to send dressed beef and fat cattle to Chicago, why this is the meat producing section of the world. Montana, I think very likely this eastern portion of Montana, will produce more food for man than the same number of square miles in the Mississippi valley. You may take out your mountain ranges and your waste land—and there is not so much waste land as you think, and all this waste land is nutritious pasture land—and you have your pasture land and a sure crop. and what would be regarded a wondrous crop in the east. They tell me they have in this territory produced as much as twelve tons of hay to the acre; but six tons is an ordinary crop and that is about as well as they can do anywhere. Then you have the advantage over almost all countries of this brisk, invigorating and exhilarating climate. You can raise a good crop of men and women not affected with malaria. The men and women raised in the mountains are always superior in that respect from malaria and fever and grow up healthy; and liberty will always prevail in the mountains because people are bright and healthy and not subject to sickness And then your mines; I will not speak of them. As we are talking about irrigating land to make it productive, there is another class of men who know how to irrigate something else and make it productive. There is a class of men that irrigate debts and make them grow. The debts of the United States have grown independent of the interest at least thirty-five per cent in sixteen years. That is a pretty rapid growth—the debts of the civilized world. And how is that done? It was done by a rascally form of irrigation. They irrigate the contractors with rascality, and produce an enormous growth, and if it won't be out of the way here I want to explain how that is done.

President Clark: Not at all. Proceed, Senator.

Senator Stewart: That is a little out of your province, and I do not propose to turn this into a silver meeting (Applause); but inasmuch as I see a great many of my old fellow miners here I would like to explain the trick that has been played on them. Now, everything depends upon the law of supply and demand. You have heard that said a great deal, but you hardly realize it—that is, all value depends upon the desire of men to have a certain thing. Nothing is valuable that men do not want. Some things have value in one place but not in another. If you were on Lake Superior you would not think of buying water, but put you out on the Colorado desert twenty miles from any habitation, and no water within twenty miles, and I do not think there is any of you but would give whatever he had for plenty of water. So you see where the quantity is very limited and the desire very great a thing has value. Suppose there were no rocks here but gold, gold would have the same intrinsic value as it now has, but everybody would get it without paying for it. So it depends upon those two things. Now, when a wheat crop fails everybody says wheat is going to be dear. And the ladies at the market know everything is going to be dear if it is scarce. That is the universal law of supply and demand Well, that is applied to money just the same as everything else. When money is scarce it will go up, and when it is plentiful it will go down Now, there is half of the world will tell you that gold is a standard, and it does not make a great deal of difference whether you have a little of it or a good deal of it, it has the same value, and that is the same with the monometalists. They call it intrinsic value, and some writers on the subject call it intrinsic value. But there is nothing in it but the desire of men. Value is outside of a thing, quality is in the thing, but value is outside, and the use of those terms intrinsic value misleads the people and they just argue the question that gold is the very best thing for money. Now, all mankind from the earliest history of the world have found it necessary, in any attempt to emerge out of barbarism, to have some medium of exchange, something that would be a general standard of profit. The savages even attempted a little. In portions of Asia they had it in early times History says they used Mulbay; and they had it stamped; and our ancestors used a grosser kind of money, used cattle and used hides and all things have been used, and there has to be some medium of exchange. If I was reduced to what I could produce for myself I would have a pretty rough time. Now, just think of yourselves out here compelled to make your clothes and make your food. Just imagine yourself out in this country alone. Pick your place and if you are alone you cannot do much. You have got to let somebody else have half, and he has got to do the same, and that enables civilization to progress. One man has something that you want and you have something that he wants, but in order that civilization may progress they must have a medium of exchange. Well, now, whenever that medium of exchange is increased it grows cheaper and property grows dearer. While property is going up people will put money in property, because they are making money by it. As long as property is growing dearer you want to get property, and the effort of men to get property makes times good. That is enterprise. He will invent ways of making property cheap. In other words, when that life blood, when it is full it runs forward with the rapidity that can hardly be realized, when money is going up and property is going down, so that every time you agree to deliver money you have got to deliver more than at the time you make the contract. The person that goes in cheap borrows money; he sells it "short," in the language of the Stock Exchange. He undertakes to deliver a thing at a future day that he has not got, and if it is scarcer then he is destroyed. If it is a stock and you pool it you break the shorts; if it is a debt and the money is much more dear so that he cannot get it to pay the debt the man is ruined. Now, there has been in the history of the world many times when money was plenty, and then we have prosperity. It has been a long time since the world had confidence in gold and silver: it is a long time since that confidence was established; and it has been looked upon now for nearly three or four hundred years as the only kind of money. It may not be the only kind of money, probably you would get a commodity of no value at all, and have it universally, in other words fiat money; but they do not take into consideration the fact that there are twelve millions of people to be educated to believe that the amount on hand will be kept the same. Now, there are twelve millions of people educated in the use of silver. Sixteen years have not deprived them of the knowledge that silver is money. There are probably five millions of people who only use gold—may be ten millions of people—not more. There are 250,000,000 people that regard gold as money, but those that use it are very few in number, and there are not more than 250,000,000 that regard it as money at all, but the civilized regard it as money, and the civilized world has regarded both gold and silver as money for a very long time, but gold has been so expensive that it could not be used through the vast multitude of Asia, where the great mass of mankind live, although the merchants have some idea of its value. Now, these two metals have been in the most civilized countries regarded for four thousand years as money, and out of them they have made standard money. When there has been a good crop of money there has been progress, and I defy any historian to examine it from the beginning to end and find that there has been any considerable progress of civilization. There were some inventions of money in the countries about the Mediterranean that helped somewhat, but there has been no progressive stride in the world's history except at the times when there was a bounteous supply from the mines In the time of Abraham we hear of the Jews giving money and from Abraham down to the time of Solomon. Solomon got large supplies of gold and silver from Ophir—gold from Ophir and silver from other places We find that they accumulated there vast stores of gold and silver, and the Phenicians had prosperity about the same time. The historians say they gathered gold and silver from all the countries around the Mediterranean, and the Egyptians when they flourished had mica as the prevailing value. The ruins of the mines in ancient Egypt are still monuments to their industry and monuments to their exertions to obtain gold and silver, and when Rome started in on her career of power she commenced by capturing countries and obtaining their gold and silver, until finally all the civilized countries of Europe and Asia and Africa within the reach of Rome—all that they had accumulated was gradually brought under the dominion of Rome. Then she went further and enslaved the soldiers. Spain presents today a grand picture of the terrible exertions of men in tearing down mountains to get gold and silver, and it is estimated by Jacob and others that at the time of Augustus the Roman Empire had about 2,000,000,000 of our money in circulation—of gold and silver—besides a vast amount which was in plate and ornaments, for they used gold and silver for ornamental purposes then more than they do now It would be difficult now to find the amount of bullion in this country that they had, they had a vast amount Then commenced intestine war The war broke out and the property became unsafe. They were invaded by the barbarians of the north It was taken and wasted and lost. No more mining was conducted, and in seven hundred years the whole stock was practically exhausted and remained so until the fifteenth century. Why, Jacob and other historians tell us, that during the seven hundred years preceding the discovery of America that the art of separating gold and silver from the baser metals was lost and had to be acquired again through the different processes that the ancients had acquired. Those were the dark ages, everybody was poor; a man's debt was growing larger all the while, a mortgage on a farm would grow larger and the price of commodities less every year, until men settled down into despair and slavery. A braver race never occupied the earth, and they were reduced to slavery. I tell you poverty makes a man a coward quicker than anything else You see a poor fellow that is in bad luck; he finally gets to be a nuisance; you kick him out of the bar room; and he would strike a good mine and he would have a fine horse and a new suit of clothes and a pistol in his belt, and he would go through your town with a chip on his shoulder and there would be none of you that would want to disturb him either. It is luck that transforms the man. Year after year of hard times makes men cowards It was a great mystery to me until I understood how the Romans could be enslaved, but I see now, year after year of poverty and starvation, family to support, wages getting lower, property getting lower, times getting harder all the time. That is what makes men weak and cowardly. Now, after the discovery of gold and silver in Mexico and South America, we not only mined but we robbed the people of what they had. They had large stores. They were partially civilized. It was taken to Europe and excited Europe and it revived mining everywhere, and people had some money in their pockets, and they commenced walking about and telling the monarchs of that country to stand back; they had chips on their shoulders, and were willing to meet any issue. The life blood of civilization was poured from the mines of America during three hundred years, and progress was onward and upward. Until the civilization of the nineteenth century was created—until about the commencement of this century, the wars in Mexico and South America retarded it somewhat, and from 1810 to 1850 we had a pretty hard time. Wages were low, property was low; a man was very glad to get $8 a month on a farm in Ohio where I lived at that time I worked for that myself.

I know just how it was. I tell you times were hard. Prices were falling. The whole world was struggling for the want of a crop of money. There was a famine of money during that period, and all the impetus of three hundred years of supplies and the accumulations on hand was not sufficient to keep up prosperity. Then it was that this new discovery came. California and Australia were discovered, and this was a new era. new life blood for progress, new life blood for civilization, and everything started throughout the world, and the progress of the twenty-three years from 1850 to 1873, take the civilized world at large, has no parallel in any period of 100 years, in finance, in wealth, in accumulation of wealth, because most every enterprise was necessarily a success—not everyone—a man might fool away his money and get broke, but the average business man, if he invested in property during that period would find that his property had increased. Of course, we had commenced to resume specie payments, and it was a little hard in this country just at that time; but take the average and the country was prosperous. Well, now, this gold and silver—the gold that came from California and Australia alarmed the men who had fixed incomes and had bonds, and during all that period the world kept in debt pretty fast because men are still money short when they think it is going down, and everybody was at work. They said it was necessary to protect the bonds—those persons having a fixed income—and the thing started with the suggestion of exaggerated reports that came from California and Australia, and they said here we must not make money out of gold; make silver the standard; it will destroy civilization to have gold in this country. Everybody can use silver. The silver is used all over the world; and they wrote the most magnificant books about it, enough to break down this table. France appointed a commission to demonetize gold, Germany and Austria in 1857, right on the first alarm, decided to demonetize gold and to adopt a silver standard. In Holland it was the same, and it was contemplated throughout, but England would not change. England in 1816 had demonetized gold in England, and as long as other nations kept it up as the standard it kept the price equal and consequently England did not like to change and would not change. France did not decide which metal she would demonetize, but in the Franco-German war then Germany said, we are the greater nation now and you cannot demonetize gold; we will demonetize silver; and they were producing a good deal of silver. Then they came to the United States and they got a bill through Congress that left out the silver dollar. Nobody knew how that was done—nobody knew anything about it, but it was gotten through Well, that left out the silver dollar here. Now, then, they used the United States and Germany to get the balance of Europe—the United States and Germany and England undertook to operate upon the balance of Europe and finally at the end of 1875 we had every mint in the civilized world closed against silver, and silver then fell like lead, and then we found out we had demonetized it. Nobody knew it until that time, because Europe kept the bimetallic basis up by receiving silver until 1875 or the beginning or pretty near the beginning of 1876, until it was generally known. In January, 1875, President Grant when he signed the Specie Resumption Bill, sent a special message to Congress establishing the two or three mints of St. Louis and Omaha for the purpose of coining silver dollars. He had no idea that no silver dollars had been coined. We did not know it until silver fell and then we began to feel it. Well, then there was a struggle in Congress, and they operated things there in a way that did not do silver much good. Well, now, what was the effect of this thing? Why, there was at that time $100,000,000 of indebtedness, public and private. There were $25,000,000 in the civilized world of national debts, payable in either gold or silver. There was three or four times that amount in private debts, incorporated debts, city debts and state debts, municipal debts of every kind probably three or four times; that makes $75,000,000,000 more, making $100,000,000,000. Now, a large portion of this was controlled in Europe by Rothschilds and other syndicates all working in harmony, they placing it among the people that enjoyed these fixed incomes, and then it was invested in bonds for them, and they controlled it. Now, the object of making it more valuable was this: We had an aggregate then approximately, say $200,000,000 borrowed money in gold and silver. It did not make any difference whether you had gold or silver, because it is the dollar that you want, the dollar that the demand is for, and if a dollar can be made out of either one of these articles I hold in my hand, it would not make any difference to the man I owe, because it is the dollar that he is after, and since the dollar can be made out of a good amount of gold or a good amount of silver, those things were equal to each other, and it did not make any difference whether more was produced of one metal than of the other, for from 1500 to 1850, 350 years, the average production of gold and silver was 70 of silver and 30 of gold, on the basis of 15½ to 1. From 1850 to 1873, during the whole of that period the amount of gold produced is estimated to have been 70 to the amount of silver produced of 30. It was changed right around. Still it did not make any difference because they were both money metals; there was the one standard and that of money. Talk about the double standard, there never was but one standard of money, having the same purchasing power, and when they struck down silver they cut off half the supply, what has been the effect? Just what those who did it anticipated. It has enhanced the value of bonds and depreciated the value of property all over the world. Now, it is estimated by the statisticians of Germany and England that have given their lives to it and it was presented to the Royal Commission recently that the decline in value during the last sixteen years has been 33 1-3 per cent, and it is still going down It will take 35 per cent more money, more labor, more cotton, more of everything to pay the debt now than it would to have paid the same debt sixteen years ago. It has been added to in that proportion to the addition of interest, there has been that much added to all debts that have existed down to this time; and that is not all, this addition is going on, and if the price of property goes down so that people cannot meet their debts, it makes hard times. Now, this question of whether silver should be restored has been considered largely in England. They found trade was depressed and they appointed a commission on the depression of trade. They found that it ran right into this question of gold and silver. They then appointed a commission on the recent changes in the relative value of gold and silver. These two commissions have been occupying the time for the last four or five years, and they have taken a vast amount of testimony. In the first place the farmers went before the gold and silver commission and said it was ruining them—"This low price of produce is ruining us and cannot we have some help?" "Since silver was demonetized it puts down the price of farm products." They said to them frankly in substance, "There is no help for you, you cannot supply our people—our manufacturers—and they must be supplied from abroad, we are dependent upon our commerce and manufactures and we must buy our products from abroad." "We understand that," they said, "but see since we have cut silver down what are the consequences? We had been dependent for generations upon America for a supply of breadstuffs. We had to pay enormous prices. Our dominions in India were not able to compete with America in the production of wheat. Now. behold, we take 70 cents, go to America and buy a dollar's worth of silver, because they all said that the purchasing power of silver had not perceptibly diminished in America or Asia, and they estimated it would take hundreds of years before that great mass of people could be taught that their unit of money in silver was not standard, they think it has intrinsic value—all Asia thinks that, and all Asia cannot be educated; consequently they will come to some kind of rental of property, and they can take, as I said before, seventy cents, buy a dollar's worth of silver, and there buy as much wheat as anywhere; and by that process you raise the price of Indian wheat from nothing to forty cents per acre. Besides there is South America, Argentine Republic and Chile brought much on a similar basis, and some from Russia, which is not on a gold basis; but our importations from the United States have fallen off in this artice of wheat in the last sixteen years at least one half, and the price has fallen 33 1-3 per cent." Now, do not you see that has accomplished something from effect; and the manufacturer comes up and says "I am manufacturing here on a gold basis, and I have to sell my commodities in India on a silver discount, and there is thirty per cent." They say to the manufacturer, "Why look at the situation? We give you cheap food, we liberated you from buying high priced food from America; we did that; that is a great gain. We did another thing for you; we developed India, and you have the monopoly of trade with India—there are 250,000,000, and we have other colonies where we give you a monopoly, making probably a monopoly of 300,000,000 of people that you can supply with cheap food. That enables you to manufacture cheaply, because you can have enormous sales, and therefore you must submit to this with the idea that you will be ultimately benefited because our trade range are such that we can keep them without putting on tariffs at all—we can keep out others by government mail regulations—governed by the military—and we can give you that trade. Now, is it not better to get your wheat from India than to be dependent on the United States?" Then came the great argument. There were thirteen commissioners. Chamberlain was one of them; he resigned and that made twelve. Well, they voted at the end six to six. Six of that side that under no circumstances would they consider the system of demonetizing silver. The other six said it might possibly be—while they would suggest for the consideration of parliament that it might possibly be a good thing. They said "We do not underrate the all important consideration that England is the creditor nation," all debts payable in gold, and that anything that will raise the price of commodities generally, that is that will make gold cheap—anything that will make gold cheap and property dearer, raises the price of commodities anywhere—will be injurious to England; that she now has the commercial supremacy of the world; that all the world is paying tribute to her, and that the contract is that the tribute shall be paid in money; consequently the lowest money we have the more of toil it will take from all the nations of the world to pay that tribute. That is what they said, and that being the controlling interest, that being the controlling motive, we will adhere to gold." And there are those greedy enough to stop the mining of gold if it can be carried out: but they have carried this thing too far now; they have carried it to the verge of bankruptcy. Take the railroads for instance. This United States has been the fat goose to pluck ever since the war. We showed such enormous vigor in meeting our obligations and such sturdy honesty after the war, and such boundless resources as to astonish the people of Europe, and our banks in New York formed partnerships with the money lenders of Europe—those that had the disposition of the bonded indebtedness of the world; they formed a syndicate with them; they represented that all that appeared to be true was true, that with the resources of America we are boundless, that there was no debt that she could not pay, and on that they formed syndicates, and when they wanted money for railroads, and towns wanted money, etc., they had these syndicates loan to them, and they borrowed more than was absolutely necessary. It is remarkable that some men have gotten rich by mortgaging them for two or three times their cost, but the debts are there, and the mortgages are there, and the people who own them have got to get along the best they can. Railroads have got the great load to carry, but they are not complaining; that would destroy their credit and the bonds would be sent home. They dare not even complain; they dare not even to say "you must not press this thing too far"; but the people who are paying railroad freights and fares throughout the United States, from which they are to get their money have already given them their notice practically by the decreasing business on the railroads and the shrinking business everywhere that money is getting too dear and property is getting too cheap, and something must be done to relieve the situation We are told, however, that we are silly children and have not yet investigated the question. "Why, what a crazy man he is," they say, to hear me talk this way. They say you can borrow money for less than two per cent in New York. Yes, you can, and what does that show? That subject was considered by this commission, too, and they said that it was a sign that money was tight there. Why, this circulating medium, this blood of civilization, money that circulates there, it is like the blood that circulates in the system, when a patient is sick it will rush to the head, and if you bleed him he will die. Now, here the money of this country is too dear to put in an ordinary business; it is too dear for that, and consequently everybody is curtailing his expenses, reducing wages, cutting off expenses, reducing and trying to meet the storm when it comes. The whole country is providing for this storm, and the money has gone to the center of the country, it seeks investment somewhere, and it will take gilt-edged securities—bonds, and money is getting cheap for that purpose; and I submit to the people if money is cheap for business purposes, something has to be done. What do you suggest? I would suggest this, as I believe this country is in a condition to get on a sound financial basis. I would take all the gold and silver that is produced and issue coin certificates payable in either gold or silver coin—making no distinction. I would take it at our ratio of sixteen to one. They say that would be a great swindle. Who would it swindle? Silver would be at par the next day after that, and would remain at par as long as the United States would do that, because nobody would sell silver in any part of the world for less price than they could get in the

United States, consequently that would be the price of it if we could give that. Then there would be no more cheap silver to buy wheat in India. Then silver would go up, then we would have what money in circulation we could produce in gold and silver We would destroy the old limitation upon it, and we would restore to the people the benefits of the discoveries of modern times. We would revive mining. They sneer at that. They say that we want to sell our silver money—these gold bugs say "They want to sell their silver" Now, I do not make any poor mouth about the silver matters. I undertake to say that our sufferings are nothing compared to the wheat sufferers, and you have got a better country in Montana to bring out the silver moneys than anyone; it is at least as good as any of them We can use all our silver mines and develop this country and make it as good as any country. But was it a good thing for this country when we were the largest silver producing country in the world, when we led off in developing mines, when the genius of the American people had opened up mines to extract the gold—and were really the men that were causing the gold to be produced in this and other countries—was it a good thing to destroy them to sacrifice them—to do no good to any person—to do no good to any person in the world except themselves that live on fixed incomes? Was it a good thing to destroy one of the principal industries of the country without excuse, and however they may sneer at us, there has been dishonestly taken from us by legislation in actual discounts, besides the destruction of many properties and the ruin of many men that had spent their lifetime in developing the country here—had devoted their lives to the development of the mines—there has been actually taken from us in actual money on the silver proceeds of this country over $90,000,000 of money. (Applause) Taken from us to give to whom? To American citizens? No. To be given to foreign bondholders to enrich them; because we are a borrowing nation—debtor nation; and the witnesses that we called before the interstate commission sneered at us and said "Who can imagine the value of America—a wheat producing, bread producing country, a silver producing country, a debtor country that is destroying one of their greatest industries, contract their currency and augment their debts." They laughed at us as silly. Still the Treasury Department will take its dictation through London and New York, and follow their dictations, and it has been so for the last twenty-five years Now, I do not propose any new thing. I am not an inflationist, I want honest money, and I do not want them to interfere with it by legislation. If we are to take the precious metals that have been handled for four thousand years, let no legislative authority interfere with it or tamper with it. (Applause). Now, the argument they have is this, that we cannot do this alone, that we must ask Europe's consent, and every emissary of the bondholders will say, "I am a better bimetallist than you are, but you must get England and other countries to agree" If we cannot do it with the consent of the bondholders we can never do it and they know it They never will consent to relinquishing the advantages they have got of the American people, for it is American property they are plundering (Applause). Now, it was well developed in this investigation that there is no accumulation of silver bullion anywhere. London economists sold it out and said there was more coin by eighteen per cent used in the bends than was produced. They said there must be that much coin of the old coin; that it was all consumed, that there is no surplus silver anywhere in the world; and then it was said with a great deal of truth by people acquainted with Asia that a vast multitude of that country who used silver were being stimulated to little more activity and the demand for silver was constantly increasing. I tell you it does not go up because it is held down. There they do not have the law of supply and demand. It is held down by two governments. These treasury departments exaggerate the amount produced They get it just as big as they can and call it official I suppose there is about a little over 100,000,000—probably 110,000,000 of silver produced and about 90,000,000 of gold—about 200,000,000 in all. Well, now, how do they keep it down? We are required to buy 2,000,000 a month, 24,000,000 a year in coin, which with a discount keeps it up to thirty-one or two millions of a nominal value Then England buys about forty-five millions for the purpose of supplying Asia; and nobody else can supply Asia. The English council that governs India draws bills on India for everything that India has to pay to England, and inasmuch as these bills are payable in silver, the price they will sell for in London determines the price of silver. Now, there is nobody else who can send silver to

China. If any merchant in this country undertook sending silver to any other country, England will sell council bills lower—½ a point lower, and although they will lose money they will make it in the end. The two governments buy pretty much all the silver produced except what is used in the arts. Now, if silver is likely to go up, they say "We will sell the council bills payable in silver in India." They can go three months and not buy any silver, if there is any symptom. So they bull the market in that way. Let any improvement be made in this country, and they will drop the council bills one or two points. So you can see then how much harm they are doing in putting down silver. Now, my object, in stating all this is, to illustrate the condition of things going to show that there is no surplus on hand. That being the fact now how are we going to be flooded with silver? In the first place, they have no silver there which they can spare except of base coin. It is the money of the people and in the hands of the people. There is a little of it in the banks, a little of it in the treasury, but it is the people's money, and they are educated to use it and must have it. But suppose they should undertake to send it here. They have got actually less than 100,000,000 of legal tender silver in all Europe and if we resume we should take silver at 15½ to 1, their ratio. The person who would buy silver in Europe would be required to pay an ounce of gold to 15½ ounces of silver. He would have to add another ounce of silver to get his money in this country. Now, how much do we want? We have got outstanding over 600,000,000 of paper—630,000,000 last winter, I had it figured up—630,000,000 of the various denominations, greenbacks, national bank notes and I cannot tell you all, a whole lot of different things that circulate as money. Now, will anybody that is ever so much of an advocate of interest money—would it do any hurt to put 600,000,000 of silver dollars or silver bullion behind that? Would it not be guaranteed by the government? Would not that be pretty good money? Well, now, I believe, and that is the opinion of most people, that it will take 300,000,000 to put this country per capita where it was in 1808, there has been such a vast increase of population. The national bank currency has retired nearly 200,000,000 of it—175,000,000 since 1883 by the payment of notes—by the payment of bonds upon which it is predicated. You know that paid up bonds. When the bonds are paid the circulation has to be retired and they have retired 175,000,000 of this national bank currency in the last five years, and they will continue to retire it. And in 1891 there are 69,000,000 dollars of the remaining national bank currency to be retired. There are 69,000,000 of the 4½ per cent bonds that will mature at that time. So the whole of the national bank currency will run out in a few years, without legislation. Now, something must be done Now, these bondholders in Europe believe that our credit is immaculate. Let a few railroads default and the bonds will come here for collection and for sale. 50,000,000 of dollars have gone in the last six months—70,000,000 of gold and silver. It is going very rapidly now, and if they should get a little scared they would call for it, for we cannot pay them in wheat; they have put down the price of wheat. We have got to pay in gold That is the time our gold will go and not till then. But I say it will take 300,000,000 to put us right. There will be 900,000,000. Then with the increase of population and business from year to year you have got to increase it. Does anybody believe we can get 900,000,000 of gold and silver, or even 800 or 600,000,000 of gold and silver in the next nine or ten years? I do not believe it is possible, if we will take all of the gold and silver that is produced at a rate of 16 to 1 and issue coin certificates payable in coin to overreach the metallic basis; but suppose that we take all that we can get, and suppose that we can get 1,500,000,000 of gold and silver piled up, then according to any sound principle of banking we could keep an issue and it would be a reserve. So that take this particular opportunity, get all the gold and silver we can—no country ever had too much—and reach a metallic basis if we can. If we can get a basis for a circulation that will circulate throughout the world, that is what we want to do, and what these new States will help do. I think they have got to have something. They will try to patch up more national bank notes or some ephemeral thing that is not sanctioned by the ages When the people get rich enough that they can evade fiat money; but while a mass of mankind must adhere to metallic money give us our right that we shall have it measured fairly by the amounts of money that can be produced, and we will enrich the people of the east and all Europe—the struggling people everywhere and that delve in the mines here we will increase in the production; we will give them a little more money every year so that property and wages may go up rather than down; so that these generations may enjoy the benefits and blessings of the great discoveries in coining that have been made. I say to the bondholders it is better for you to do this than to take the chances of repudiation The people of the United States cannot continue to pay fares and freights on railroads sufficient to pay the interest on the debts already contracted, let alone paying dividends to the stockholders. The thing will stop itself as easily as two and two make four. The demonetizing of silver has not only effected that matter, but it has diminished the production of gold You all know that 1-3 and perhaps ½ of all the gold that is produced is produced in combination with silver or silver mines, and that the mines throughout the world that are worked for both gold and silver would not pay if worked for one of the metals alone. Let the monometallists have their way and demonetize silver so as to stop these mines, and you will have to cut off more than one-half of the gold supply, and here we will be vastly increased in population; there will be a vastly increased demand for money and a constant decline, perpetual and forever withering contraction. And it is here in America—here alone that this can be withstood. The common people do not discuss it; they have no means of discussing it. Europe is governed by the bondholders, by the people living on fixed incomes, and they issue their decrees and they must be obeyed It has, beside, a military camp, and any attempt at strikes or resistence is quickly quelled by the force of their military establishments. It is here in free America that we must restore an honest standard of money and prevent those holding fixed capital from destroying this civilization by contraction. They are depriving this generation of a great boon that the discovery and development of mines has furnished for us It is our heritage; it is the heritage of civilized man that mines had been discovered and that civilization has progressed. We protest and will ever protest against the crime of the century that undertook to interfere with that right—undertook to cut off half the supply of the precious metals for the selfish purpose of increasing the obligations of contracts and adding millions and millions of days of toil—making it necessary for millions of days of toil—who can estimate it?—to pay the debt that has already been made by the increase of thirty-five per cent of the existing debts of the world besides the thousands that are thrown out of employment and must starve in consequence of it. We say that we will protest against this crime and we will work in season and out of season to restore this country to its money, to restore it to its inheritance which gave it an independent financial policy, it needs that as much as it needs political independence; it needs financial independence quite as much. Its financial dependence upon England is most degrading. The fact that the telegraph can send through New York to London for the orders of financial managers, and that those in the treasury department of all parties obey their behests is humiliating to us Americans, when they tell you that they are bimetallists, you must ask England to tell them that they must stop talking such nonsense, that they are in the employ of the enemy and attempting to betray you; that you are willing to trust the limitation that the word has placed for the last four thousand years upon the amount of currency; that you will take the amount, let it be covered by the amount of gold and silver that can be produced, and until some evil results from using these metals and it be made apparent to you, you will not change. If the crop of gold and silver fail, the creditor would say I must have my gold and silver. Why, when we have a crop of gold we are not entitled to it. Why? Are not enterprise and civilization entitled to it? Why are those that live on fixed incomes and can produce nothing and live upon the toil and sweat of others, why should legislation be made for them particularly, which shall impoverish the masses. Why, Montana, Washington, Idaho and the two Dakotas will join with Kansas, Nebraska and other States which understand this question—and I am glad that there are here now two champions of the rights of the people and have stood up on all occasions for the rights of honest money. My two colleagues on this committee have done yeoman work in behalf of the people and have opposed contraction at every step. Be assured that those who have come here among you are in full sympathy with you—full sympathy with honest money—full sympathy with the development of this country, and we have come here, if we can, to find out how we can do you good. (Applause)

Mr. Maginnis of Lewis & Clarke: Mr. President, I move to take a recess until half past one, when we will listen to the distinguished colleagues of the gentleman who has so eloquently addressed us.

The motion was seconded.

The Chair put the queston on the motion of the gentleman from Lews & Clarke and a vote being taken the same was declared carried.

The convention took a recess until 1:30 P. M.

Friday, August 9th, 1889. Afternoon Session.

The convention was called to order by the President at 1:30 P. M.

The Clerk called the roll.

The Presidest: The convention will now have the pleasure of listening to another of our distinguished visitors, Senator Reagan. I have the honor to introduce to you Senator Reagan from Texas. (Applause)

Senator John H. Reagon of Texas spoke as follows:

Senator: Mr. President and gentlemen of the convention. I esteem it a very great honor to have the privilege of appearing before the chosen representatives of the Territory of Montana and of saying a few words in reference to questions which not only interest your immediate section but the whole country. The Congress of the United States have made provision for securing surveys to determine where the waters are located which may be used for irrigation, and for setting apart such waters and the land necessary to apply them to the use of the public. The Senate of the United States felt that the question was one of sufficient importance to justify the appointment of a committee to inquire into the question of irrigation in the arid regions of the United States. When we remember that about four-ninths of the terrritory of the United States is in a condition which requires irrigation to utilize its soul and to give the full fruition of its crops, you will understand how important the question is to us. The question of irrigation is not a new one to our country. It is older than history, established in Egypt and Asia. It has been extensively applied for a long time to much of Europe, especially in Italy, in Spain, and more recently in France. It has been extensively applied in the Republic of Mexico, and in Central and South America. So that we have much information on this subject to guide our actions, and may avail ourselves of the experience of other countries in the development of a system of irrigation for the people of the United States. I do not profess to be familiar with the subject, though I have been learning as much as I could from my distinguished friend, the Senator from California, and from Major Powell who is along with us—trying to learn all I can to join in an intelligent report to the Senate as to such facts as may guide the action either of the federal or state governments or territorial governments, or of the people themselves. I shall not go into any detailed discussion of the question of irrigation. The application of rules which would distribute the water that may be obtained for the irrigation of the alluvial lands of the country is one of a great deal of interest; it is one of much difficulty, and gives rise to a great deal of controversy where there is no certain system whereby the water of the ditches can be applied to the soil. I am inclined to the belief that the plan suggested by Majrr Powell will probably be found to be the best. I would not encourage the people to expect too much from the federal government. It will no doubt furnish surveys and the information necessary to enable the State and Territorial governments and the people to avail themselves of such water privileges as may be within their reach. That it will enter upon the system to provide irrigation is doubtful, is improbable. I do not know how far the States and Territories may take up this subject in detail. The plan suggested by Major Powell, who is better informed upon this subject than I am, is to form irrigation districts, each basin to form a separate district, to be organized and controlled by the people of the locality, under rules which will distribute water to the lands which are to be supplied by irrigation in these districts, giving the local community the control of the question of the application of the water to the soil. I am a very great believer in self-government and in local self-government, and I am a very great believer in the government of the people by somebody that is a good ways off from them. While I make this general distinction, as I said, I do not propose to go into the discussion of irrigation in detail. We shall visit, after leaving this territory, Washington Territory, Western Oregon, Utah, Nevada, California, Arizona, New Mexico, Texas, Colorado and Kansas. That is in our plan. It is to obtain all the information we can upon this subject that we may lay before the Senate. I shall not occupy further time upon this subject. There is another question that was presented to you by Senator Stewart to which I desire to call attention. In the first place I desire to say that the admission of the four new states now in preparation for admission into the sisterhood of states, with probably two or three others soon to follow, is going to form an epoch of this country, it is going to secure a power to represent the interests of the West which it has never passed. (Applause). It is going to promote the wealth of the western country It has so happened for nearly a quarter of a century past that this government has been run in the interest of classes at the expense of the great masses of the people, and it may not be inappropriate before the members of this convention to point out some of the things which have been done in this line, as it is to be hoped when these new states send their Senators and Representatives to Washington they will send men who will represent their interests and their own people, and not men who will represent Wall Street and London and Berlin and who will aid in enslaving the American people. (Applause). It will be remembered that the government of the United States was involved in a very large debt in the prosecution of the recent civil war, and to a large extent to the issuance of its notes until the redundance of these notes greatly reduced their value In order to restore them to par or more nearly to par the government attempted a policy of funding these notes into interest bearing bonds. In order to induce the people who had money to take these bonds, it was provided that they might be purchased by the legal tender notes at par, which, when many of them were purchased, were worth about 50 cents on the dollar; so that a man with 100,000 dollars of coin could buy $200,000 of notes, and that is $200,000 of notes could buy $200,000 of interest bearing bonds, the interest payable semi-annually in gold. Thus it so happened that the holders of coin were able to double their money on this transaction. I do not mention this to criticise the action of the Government, but simply mention the fact as the beginning of a system of measures which could not be lost sight of in this country. It may be possible it was the best that could be done under the circumstances. As to that I express no opinion I only suggest that of the hundreds of millions—the thousands of millions of notes funded, the persons and corporations purchasing them double their investment. When fifty years ago Stephen Girard, by a long course of industry and trade and by some remarkable accidents, acquired a fortune of three millions of dollars, it was thought to be a very wonderful thing, it was the subject of remark throughout the country Of recent years we see that men obtain fortunes ten and twenty and fifty and one hundred, and in a few instances two hundred millions of dollars, in a short time Now, we all understand and know that no man by legitimate business or legitimate speculation can earn such a fortune in the lifetime of a human being. The men who make these fortunes are not supposed to be thieves, they are not thieves in the figured sense of the world, nor are they robbers in the sense of the man who takes your money at the muzzle of the gun; but these fortunes are made by the legislation of this country which has been under the moneyed classes. (Applause) At least I shall submit facts which determine that to my mind; you are to determine whether they demonstrate it to you or not. In 1869 when the law was passed which had for its title an "Act to Strengthen the Public Credit," it was provided that these bonds which had been purchased for the Government notes worth fifty cents on the dollar should be paid in coin, that is in gold and silver coin, of the weight and fineness prescribed by law. Up to that time they were payable in lawful money, which meant gold coin, silver coin and the legal tender notes of the Government The bondholders, who had got the bonds for fifty cents on the dollar, with the gold interest payable semi-annually, concluded that the legal tender notes with which they purchased them were not good enough to redeem them. They were good enough for the soldiers and sailors of the country to pay them, they were good enough for the public officers and public contractors, they were good enough for all classes of people except this chosen class which had purchased its bonds at fifty cents on the dollar. They were not good enough for them. Some of the interested men in this country examined this subject subsequent to the passage of that act, declared that by reducing the volume of this money out of which these bonds could be paid, by reducing the kinds of money out of which these bonds could be paid, that their value had been increased with reference to the value, and property and labor out of which they were to be paid, not less than five hundred millions of dollars, and that the property and labor of the country out of which they were to be paid had an additional burden imposed upon them of not less than five hundred millions of dollars. So that this was certain step in legislation in the interest of capital and against the property and against the labor of the country; and this begins to open to your view the way in which these vast fortunes could be made. I do not propose to go through that whole subject; I would not have time nor would you have patience for me to do so, and I shall only examine the particular loan, which shall have for its object my claim that this Government has been run for twenty years in the interest of the money class and against the interests of the great body of the American people. It was then provided by law, and I forget the date of that act, that the legal tender notes outstanding, when paid into the Treasury, should be canceled and retired. At the time that act was passed there were about four hundred millions of legal tender notes in circulation. When in 1877 the Congress passed an act repealing this law there remained still in circulation about 346,000,000 of dollars. In 1877 the Congress determined to reverse the policy of running the government in the interest of the money classes, and they repealed that act and saved to the people 346,000,000 and some odd thousand dollars of legal tender notes to be a part of the money of the country, to aid in its industries and to reward its labors, instead of making that sum an additional interest bearing bonded debt to be saddled upon the industry and property and labor of the country. There were two objects in the passage of this law, one of them was to reduce the volume of money and increase the value of coin; another was to secure to the national banks the privilege of issuing the money of the country. I do not propose to look to that now, but I simply mention the fact. In 1872 and 1873 the bondholders got distressed again, and they were very anxious that this country should adopt an honest money system. They were earnest, vehement advocates for honest money, and induced a large part of the press of the country, especially the metropolitan press of the east, to advocate honest money in the payment of debts. The honest money was to require the demonetization of silver and make the debts—the national debt, the state debts, the incorporated debts and the individual debts of this country, payable in gold alone. Now, then, in their interest when the law was passed taking away from the people the right to pay these bonds in legal tender notes, it was a square clear violation of the contract between the people and the bondholders. They made the debt on the faith that it was to be paid in the lawful money then in existence. The law violated the contract in order to increase their fortunes and increase the burdens of the people. When they wanted silver demonetized and secure its demonetization in the interest of the moneyed classes and those having fixed incomes, they again reduced the volume of money out of which these debts were to be paid, taking from the use of the people about one-half the metal money of the world, made their national, their state, their corporate and their individual liabilities, and thus very nearly doubled the value of the bonds with reference to the labor and property out of which they were to be paid, and very nearly doubled the burdens of the people, not only in paying their bonded debts, but in paying their state debts, in paying their corporate debts, in paying their individual debts which amounted to thousands of millions of dollars—imposing a burden upon the people which as Senator Stewart told you today, was one it would have been impossible for them to discharge under any conceivable circumstances. They secured, however, the demonetization of silver, and they did it in the face of the fact that ours was a debtor nation—our corporations and states were debtors and our people were debtors—and in the face of the further fact that the mines of the United States were then as they are now yielding about forty per cent of all the silver taken from the surface of the earth. Now, my friends, let us inquire in our minds whether if Great Britain and Germany or either of them had been placed by the Almighty with such a source of wealth as our silver mines, they would have been willing to destroy and sacrifice the people. Who believes it? I do not suppose a sane man on earth believes that either of those governments would have consented to such a fraud and outrage upon their people. Let us inquire of ourselves whether our eastern cities such as Boston, New York, Philadelphia, Baltimore—if in their vicinity and in their states they possessed these sources of wealth, whether they would have consented to surrender it. Who supposes they would? But that was not the case. They were the holders of the public security—of the credits of the country to a large extent. The silver was to be mined in the distant west that was to be represented in the Congress of the United States, and they seemed not to find it difficult to get plenty of newspapers to advocate honest money. That is a violation of the contract between the Government and the people in the second instance, for the making of millionaires on the one side and paupers on the other. (Applause). Now, my friends, if Montana and the two Dakotas and Washington shall send Senators and Representatives to Washington to cooperate with the four Pacific States and with Colorado and Kansas and Missouri and Arkansas and Texas and the populations of the Southern States, and such other States as will cooperate with us, we will produce a change in the legislative experience of this country (Applause) and provide for the free and unlimited coinage of silver. (Applause) Now, in order to discredit silver—for after we had secured by the act of 1877 the unlimited coinage of silver, still the government in every administration we have had, no matter by what party—the government has cooperated with the bondholders and the banks to discredit and to degrade silver. One of the means has been in this way: Gold is coined at the expense of the government. And the gold taken from the mint, whether of bullion or of coin, is coined and recoined at the mint of the United States free of expense to the holder of the bullion or the coin to be so used. Now, then, silver, on the contrary, is required to pay to the government a certain percent for its coinage, and it is a considerable amount. I mention that to show you the drift of legislation and the purpose to degrade silver in the interest of the bondholders, the bankers and the capitalists and the men who have fixed incomes. I therefore say to you if you will send men that represent our new states to cooperate with those already in the Union we will secure the free and unlimited coinage of silver as we now have the free and unlimited coinage of gold. (Applause). We will not only do that but we will relieve men who are so much distressed about the difficulty of carrying silver about, by providing for the issuance of coin certificates—not silver certificates—not gold certificates, to enable them to keep up the distinction between the price of gold and silver—but coin certificates redeemable in gold or silver at the pleasure of the government, at the ration of sixteen to one as provided by our law and take away all temptation to degrade silver any further. I mention these things for the purpose of showing you that hundreds of millions—thousands of millions of dollars have been transferred from the producers of property and given to the moneyed classes by operation of law, and under the policy of the government, and I have done it in order that your attention, which has no doubt before been called to it, may be re-awakened to the necessity of meeting this contingency in providing for your representation in the two Houses of Congress. Now, we have been told by the men who are determined that silver shall not be placed in its proper place, that we cannot afford to remonetize silver excepting by agreement with other countries. Well, if you are only to secure the remonetization of silver when Great Britain and Germany consent, it will never be remonetized. Why? Because both countries, and especially Great Britain, are large creditor nations. The English people are the creditors of every civilized government on earth and of corporations in all the civilized world. A large portion of the revenue of that country consists of interest bearing bonds they hold upon other governments and the corporations and the people of other countries Whatever will increase the value of those securities will benefit their people, and one of the ways to increase their value is to decrease the different kinds and the volume of money out of which these securities can be paid; so that as a matter of public policy they desire that silver should be demonetized, and they make their contracts for the debts credited among them payable in gold in their own country. A state or a corporation goes to their banks or moneyed men for accommodation with those bonds. They perhaps give him ninety, maybe eighty, maybe seventy-five cents on the dollar for his bonds, take them at their face and demand the payment of interest at the full face in gold, and the payment of the principal in gold: so that they get the interest and get the discount on these bonds and all of them are required to be paid in gold. I cannot now call up an estimate of the amount of the credits which Great Britain holds against other countries, but it is enormous, and she has all that temptation to benefit the moneyed classes, thereby reducing the kind of money in which those obligations can be paid. Her own citizens, the middle classes, and the laboring classes, suffer by the demonetization of silver and are clamoring for its remonetization, and the clamor has been so great in Germany recently that it is believed that Germany will be compelled to remonetize silver by the demands of her people. Now, then, there are but few states if any in the Union but that owe debts besides the large national debt which so far has been of late greatly reduced. The railroad corporations owe thousands of millions of dollars; the most of them owe the entire cost of the construction of these roads, and are trying to pay the interest on them, and debts are generally measured by the amount of bonds it is possible for them to float; so that the debt honestly contracted and the watered stock alike has all to pay its interest, and with silver demonetized have not only to pay the principal but the interest of those debts in gold coin. The people are largely indebted and were then—an active, energetic people, enterprising people in the country where enterprises are frequently started, and debts contracted to push them forward, and yet in the interest of the moneyed classes the currency is contracted, the silver taken from circulation in large measure and bonds in circulation, in a large measure degraded; and these men who owe debts, who have mortgages upon their property, have twice the difficulty of paying their debts and lifting those mortgages that they would have with a free circulation of currency of both silver and gold in equal scale.

My friends, I feel I should be trespassing to take up your time longer. I will conclude by saying that you will find many states outside of these new states, and their Representatives and Senators prepared to cooperate with you not only in removing these obstacles to prosperity and restoring a proper gold and silver and a proper amount of currency, but you will find them ready to cooperate with you in other respects which I have not the time to discuss now, in relieving the masses of the people against the burdens imposed upon them by unjust legislation—by legislation which has made millionaires to which I referred, and which is causing the great masses of people to struggle from year's end to year's end, scarcely able to meet their liabilities and take care of their families (Applause).

The President: Gentlemen of the Convention, I have the pleasure and honor of introducing to you Major Powell, Director of the United States Geological Survey.

Major Powell spoke as follows:

Major Powell: Mr. President, and Gentlemen, it is with some degree of embarrassment that I speak to you after the distinguished gentlemen who have spoken today, and who have discussed national affairs so eloquently and so ably to you. I such discussion I have taken no part. I came to this country rather as a pioneer I am older in this country than most of you. I feel as though most of you were new comers here and were tenderfeet. I came at an early time, and I want to talk now as one of the old pioneers, if you please, and not in the capacity of a statesman. (Applause). It has fallen under my observation from time to time and been a source—a theme of study for many years, the general question what would ultimately become of this country what would be the form of the industries in this country and the form of government in this country? For you are under peculiar conditions. In the eastern half of the United States we have settled governments, that is we have state and local governments adapted to the physical conditions of their country; but in the western half of America, the local, the state, the territorial, county governments and the regulations and the national government are in no sense adapted to the physical conditions of the country. (Applause). And these are the problems which have been interesting me for many years, and I will illustrate it by simply stating somewhat of the physical conditions of this state now forming, and explain to you what seems to me as an old pioneer, not as a statesman, if you please—what seems to me to be the form of local government and the adaptation of institutions of these physical conditions, which are necessary for your prosperity, and which you will, as I believe, ultimately have. Montana has an area of about, if my memory serves me, ninety millions of acres. Of that ninety millions thirty-five millions of acres are mountainous—thirty-five millions of acres of land are dedicated to special industries thereby. In those mountains you will find silver and gold, copper, lead, and in the mountains more or less iron, in the flanks iron and coal. But the mountain region has something more in it of value, as you will see. The mountain region is the timber region of the country. On the plains and in the valleys no timber grows. The regions below are in part agricultural and in part pastural. And the remaining portion, leaving out the mountain area, about thirty-five million acres of land, can be redeemed by irrigation, according to the latest estimates and careful study of the matter, which we have made for the last two years. It must be understood that if thirty-five million acres of land were redeemed by irrigation in this country, it means the utilization of all its waters—it means that no drop of water, which is the blood of agriculture, if you please, the life blood of agriculture—that no drop of water falling within the area of the state shall flow beyond the boundaries of the state. It means that all the waters falling within the state will be utilized upon its lands for agriculture. That is made under some careful estimate and partial estimate of the volumes of water running in your streams, a study of the rainfall of a district, and upon a further computation that it will take one acre of water to irrigate one acre of land. Now, understand what I mean by one acre of water, for as engineers we do not reckon water in inches of flow, but in acre feet. An acre of water one foot in depth we call an acre foot, and on an average in Montana for years, irrigation of an acre of land requires an acre foot of water. It is a very simple ratio as you see. If all of the water flowing in the streams of Montana be used—not all the water flowing during the season of irrigation, but all of the water is used in irrigation, it will irrigate about thirty-five million acres, but in order to utilize all of this water and to redeem all of this land it becomes necessary to store the waters which are usually run to waste, that is the season of irrigation in Motnana will vary from six weeks to nine weeks, in some few cases it will be longer than that, but in the main we may say that the time of irrigation, the season of irrigation will be about two months With that understanding, ten months of the flow runs to waste, and in order that the thirty-five million acres of land be redeemed for agriculture within this state, it is necessary to use all that water running to waste to the sea—to store it. Then there remains twenty million acres of land which cannot be used for agriculture, which are yet in the mountains and not covered by timber, but which yet have more or less value for pasturage purposes. That is the condition, and, gentlemen, it is a magnificent heritage—nineteen million acres af land; thirty-five million acres of mountains covered with forests, and with mountains filled with ores—thirty-five million acres of land as rich as any other that lies under the sun, to be made fertile, to be made to yield in vast abundance by the utilization of these waters. It is no misfortune as at first it may appear—it is no ultimate misfortune to the people that their land is arid. The thirty-five million acres of land which you have to redeem by irrigation will be to you much more valuable than if that water was distributed evenly over the country so that there was sufficient rainfall and irrigation was unnecessary. To those who have not studied the subject with care, the proposition seems perhaps somewhat quixotic, and yet there is a long line of history to prove what I have said. I will not stop to enter upon this line of the subject, but I wish to call the attention of you gentlemen to some of the conditions which you must meet in order to secure the prosperity of these people. The question of irrigation then is undoubtedly bound up with some other questions of almost equal importance, as you will see as I proceed. The timber of this country grows on the mountains, it is therefore not distributed throughout the country where it is needed The agricultural people will have their timber lands five, ten, twenty, fifty and one hundred miles away from home, but the people who want to use that timber and who live down in the valleys and spread abroad over the plains, they are the people primarily interested in the forests, and the people who own the irrigable lands must own and must control the forest lands, for a part of their prosperity depends upon the utilization and preservation of those forests. There is still another reason In the mountainous region like those in the arid country, a large part of the rain falls upon the mountains. Usually throughout Montana you have say from twelve to fifteen inches of rainfall in the low country and from twenty to twenty-five, forty, fifty and even sixty inches of rainfall on the mountains. The water necessary to fertilize the agricultural lands falls somewhere else—falls upon these mountains. And the men who are engaged in agriculture in the valleys and on the plains are interested in the mountains for another reason than that they must derive their source of timber from them. Every iota of value there is to the lands to be redeemed for agriculture depends upon the water with which they are supplied. The intrinsic value exists in the water. And the water falls not on their own land—the water falls elsewhere in the mountains, and hence the people who live by agriculture below have a double reason for being interested in the forests and mountains above, and ultimately they must control those mountain acres—the agriculturists must own and control not only the lands which they occupy themselves, but also the lands where the timbers grow, and also the lands where the waters fall which make their lands valuable. Now, having made this brief statement of the conditions and the facts at large, let me apply them. The state is in the formative condition. You are met here to adopt a constitution, and there are questions that ultimately will be of vast interest to these people—and I beg pardon almost for mentioning them, but I have mentioned them from the standard not of a statesman but only of a pioneer—a man in the country earlier than occupants usually and you must take them only for what they are worth from an observer, and not a statesman. But this is the point. The whole area of Montana may be easily divided into drainage basin districts of country which constitute a geographical—a physical unity; a region like the Gallatin Valley, for example, with a river flowing down through the valley with its tributaries on either side, heading out from the mountains to the very rim of the Gallatin basin on either side. Every man who settles within the valley of Gallatin comes ultimately to be interested in every part of that valley, because it is the entire Gallatin valley, the whole drainage basin, gathers the water for his farm Only a portion of these valleys can be redeemed for agriculture; another portion will be utilized ultimately for pasturage. High up in the valleys we have the timber lands, and higher up the valleys we have the mountains where the waters are condensed. The people below must necessarily be interested in the whole drainage basin around about where these waters are gathered. Now, agricultural industry carried on under conditions where irrigation is absolutely necessary, are carried on under very peculiar conditions as compared with those of humid lands. You have not in this territory reached a condition of affairs where the matters which I now wish to present to you yet press upon you. They may in some few localities only; but very speedily the question of water rights—who owns this water, is to be the important question in this country, remember the question of land rights is comparatively a minor one as compared with water rights, and water cannot be measured out to you by meets and bounds; you cannot lay out lines and drive stakes in the clouds of the heavens from whence the waters come. They pour down today in storms and tomorrow in storms, and the year in storms, and flow down to the rivers and creeks, and you have to measure them out by gallons or by acres from day to day, from month to month and from year to year. All the great values of this Territory have ultimately to be measured to you in acre feet, and in the preparation of a constitution for this great State this great fact should be held in view. Now, without entering too largely into the question of pointing out the necessities for regulating the use of waters and the measurement of waters etc., I want to present to you what I believe to be ultimately the political system which you have got to adopt in this country, and which the United States will be compelled sooner or later ultimately to recognize. I think that each drainage basin in the arid land must ultimately become the practical unity of organization, and it would be wise if you could immediately adopt a county system which would be coincident with drainage basins, for in every such drainage basin you have got to have first the water courts. Disputes will arise from day to day about the waters, and in every district there must be ultimately a water court. There must be a corps of officers, water master or supervisors who measure out this water for the people. The general government cannot, the State government will not measure the water for you, neither can they measure it for themselves, and you have got to have local self government to manage that matter. Then the people who are interested in these waters are also interested in the timber, and the people who are interested in the waters and agricultural lands are interested in the pasturage of those lands. And now I come briefly to state what I believe should be done. First, I believe that the primary unity of organization in the arid lands should be the drainage basin which would practically have a county organization, if you please, with county courts, etc.—I need not enter into the details—then that the government of the United States should cede all of the lands of that drainage basin to the people who live in that basin. (Applause) I do not believe that the government of the United States can ever keep up a police force or a system of agents to manage the timber of this country. (Applause) I believe that the people of the drainage basin themselves are more interested than any other people can be in that particular drainage basin—that they are the only people who can properly administer that trust, and I believe that the people who live along every valley in this country should be the people who control three things besides the land on which they live, they should have the control of the water; they should have the control of the common or pasturage lands, and they should have the control of the timber lands (applause), and I have no doubt but that could be secured through general legislation ultimately in this country, for the interests of this western country are being rapidly understood in the east, and the people are filling up the country so rapidly that they are very soon to be able to make the eastern people respect their wants, their needs, their rights and their wishes. The simple question which I have then to present to you, which I think would be worthy of your consideration, and which early in the history of the State or even in the adoption of your State constitution you should consider, is, what should be the primary unit of your government? And I think that the careful study of the matter will show you that the drainage basin is the natural unit and should be a county of this State. If then you will provide a system of counties by drainage basins you have the fundamental organizations, and can in time acquire all the other rights and assume all the other duties which that organization demands. For thirty odd years I have been studying this western country when no irrigation was practical except in a few places in Utah and New Mexico and so I have been traveling about the country from year to year surveying now this portion and now that, and studying from many standpoints, and I have seen gradually agricultural industries growing up, and today within the arid region not less than seven million acres of land are cultivated by artificial irrigation, but the time will soon come when this will be multiplied tenfold and one hundredfold, for everywhere throughout the whole region west of the one hundredth meridian the people are wide awake to this problem The mountains may be filled with gold and silver; the hills may be filled with coal and iron, but all these have little value unless there is a basis of agriculture for a prosperous people, and that you can have in all of this country. But in order that you may not have vast conflicts, in order that irrigation may be developed, that agriculture may be developed, with the least friction, with the least cost of the people, the system which I have mentioned will be of untold value. Let me call your attention to two more points just here The first is, that litigation is a prolific source of expense and evil, and you should endeavor to provide for a proper system at the very beginning of your State for adjusting rights by your fellow citizens among yourselves. It will save you—you hardly know how much—unless you have studied irrigation in other lands you will hardly know how much, but it will save you a vast cloud, a vast amount of litigation, let me repeat once more to you and close with this. that you have three interests, all tied together, and they ought to be tied together in the organization of your body politic as they are tied together by physical conditions. The agricultural lands are dependent upon the mountains above, and the farmers below ought to know the mountains above—own the control of those mountains so far as they are the source of the timber which they must use, and own and control them so far as they are pasturage is concerned, for pasturage on a large scale, the range pasturage which has grown up in all of this western country must necessarily decay as such and must become tied up with the agriculture of the land, not that there will be less, but more stock raising in the country then, but it will be distributed instead of in the hands of the few people—it will be distributed ultimately among all those who cultivate the soil.

I thank you gentlemen for your attention. (Applause)

The President: The Chair is not advised as to whether or not any other gentlemen are to address the convention.

Mr. Robinson of Deer Lodge: We would like to hear from Senator Plumb.

The President: Will Senator Plumb come forward?

Senator Plumb was escorted to the President's desk.

The President: Gentlemen of the convention, I have the honor to introduce to you Senator Preston B. Plumb of Kansas, who will now address you. (Applause)

Senator Plumb spoke as follows:

Senator Plumb: Mr. President and Gentlemen, I think this must be due to the position which I accidentally occupy. I cannot conceive it possible that a Territory so rich in all the elements that go to make up the requirements of public life, so rich in those who can express themselves ably upon all occasions, would have expected anything from me which would add to that which has already been said. I felt when I heard Senator Stewart speaking about the results of irrigation in Egypt and India, I thought then if I were called upon I might say something by way of admonition in view of the fact that the illustrations which he drew were of places which had entirely disappeared, and so far as anything which he said was concerned, they seemed to have made exclusive use of water (laughter) for of that I thought I would hardly need to point to a Montana audience. But that was the only thing that occurred to me which was left unsaid in his very admirable address.

A famous Englishman said that statesmanship consists in a knowledge of the resources of one's own country If that were literally applied to the American people of today, there would be no statesmen in the best acceptation of the term (applause) because no one knows, no one can know, unless he were gifted with prophetic vision, the entire resources of this country. Suffice it to say that while we learn something every day we know enough now to know that this is the greatest country in natural resources there is in the world, (applause) and if it is to be made fit use of it is because the people who inhabit this country are better, wiser and stronger than the people have been elsewhere I have been a part in a minor way of the institutional history of one of the States of the Union, and the most interesting part of the things that I see anywhere around me is the formation and growth of institutions. You are engaged here in preparing for the admission of the Territory into the Union, and I hope that you have been admonished that self government began in mining communities, and that therefore you are expected to make a constitution of a government which shall be equal not only to the constitution and governments of other States with which you shall be associated, but that it shall be better than all of them put together. The greatest ambition, the only ambition I think worthy of having is that for power, no man unless he be unusually sordid ever would admit that he wanted money for money's sake; he wanted it because it would widen his horizon, because it gave him new power. The men who sit before me are the men who made this country; they are the men who built up its institutions, organized its counties, school houses and churches, and laid broad and deep the foundations of the social order, and whose names and the best of whose judgments and of whose intentions and ideas of justice are to be embodied in the foundations of the government which you are going to lay before this convention adjourns; and in that everyone of you will have, for I know the work will be well done—that sense of power which mere money cannot bring. Montana will be one of the States of an imperishable Union. It will be not only one of the States of this Union, but will be a State which Mr. Stewart said in his speech in St. Paul in 1860 when referring to the source of power in this country —he said it was not the States on the Atlantic or the Pacific coasts that would speak the will of the American people, but it was the States which lay at the sources of the great rivers which contribute an infinite variety of sources of wealth and the power and perpetuity of the American people, would finally speak the will of this great people of the United States, and that the cities on the sea coast were only the mouths which would speak the will of that people. And so it is the men of the interior and the men who live at the sources of the great waters and the men who live not only in the agricultural region, for such it has been demonstrated to be by that which has passed under your own observation, and which you have heard today—the men who have that variety of resources embodied in the conjunction of these two great industries, agriculture and mining, that are finally to be the resources of power in the United

States, and therefore Montana ought to speak not by the mouths of the senators but by the mouths of the people in whom there is the strongest and best evidence of the ability of the American people for self government, represented in the best government here on the crest of the Rocky Mountains. (Applause) I do not speak this by way of admonition. I have seen that attrition going on in the mountains, on the plains and in the valleys, the result of which has been the selection of the fittest, and I know that no man here and no other man in the Territory, with possibly here and there an exception, has remained among you except it was because he had embodied in him that determination which only expresses best an American citizen—that willingness to do and that ability to overcome natural obstacles which finally brings together under one head the very best that is human And so I know that of these men in the valleys and the men in the mines and all the men in the limits of these Territories are not here accidentally, but are here upon the principle of selection, and here is to be a community started upon a plain which is equal to that of any of the States of the Union, and I say this for the purpose of expressing to you that which the people of the United States have a right to expect, that in time Montana itself, not as a younger brother—that in time Montana itself, not as a brother-in-law, but as a peer— not only as a peer, but as a State representing that phase of humanity, that perfection of development in the near future which shall make the older States not only willing to join it hand in hand but to take off the hat as it is always taken off in the presence of superiors. (Applause). And it is this dominion, gentlemen, which is represented generally in what you do today and tomorrow and the next day until you adjourn, which is to be submitted to the suffrage of the people of Montana and which is to be exhibited finally to the people of the United States and the people of the world as the idea of the people of Montana as to the framework of a government fit for a free people. There are some things which have been touched upon by those with whom I have been associated in this committee which I will not speak upon in a general way. We struggle each for his own interest. You struggle for silver, for irrigation, for the things that are peculiar to you. The Atlantic States struggle simultaneously for things that are peculiar to them All these interests struggling together finally result in compromise, which is supposed to represent as it usually does the general average of interests. It is because we must express ourselves and because though beaten today we may prevail tomorrow that the republican form of government answers to the abilities and the expectations and the hopes of a free people. You are for silver because it is one of your productions; I am for silver because I am for my country and for all the people in it. (Applause) I do not mean to say that your standard is less high than mine, but the cause is immediately before your eyes. I am for silver because I am for everything just produced from the soil and under the flag of the American republic (applause) and I take no account of any patriotism that does not consider first a man's neighbor, next his township, next his county, next his State, and next his republic against all the world (Applause) The millions outside are nothing to us, except as mere atoms in molecular space. If they do not like the situation they are in the people of the United States say to them "come and join your fortunes with us", but as long as they remain where they are, they are foreign to us, speaking in a foreign language, and a foreign tongue, and we prefer first to take care of our own. For these reasons, as I said, I am for silver as I am for gold. I am in favor of developing every resource in Montana, but in such a way as to beget self help, self reliance and all that impact and contusion of interest and all enterprise, and all energy which makes men stronger Mr. Seward said as he went out of the gates of Jerusalem one morning that the officer who was in charge of the party as he rode up and down to see that no one not under permit was in the ranks, cried out "How much man is here?" That is the question that is always confronting us, "How much man is here?" Give us the man and I know that every irrigable acre of Montana will sometime be developed. Given the man and I know that there is no atom of silver or gold concealed anywhere in its mountains that finally from enterprise and energy will not secure it Make institutions for man, develop the manhood, and all the balance comes because this fruitful soil that only needs to be pricked by the hoe to laugh at the harvest—all these mountains that are bound to yield to the impact of your pick will bring forth everything that is naturally attributed to that energy and to that enterprise and to that manhood. (Applause). Now, gentlemen, and Mr. President, I hope that you will excuse me from anything further. (Applause)

The President: The next in the order of business will be the reading and presentations of petitions and memorials, which will include remonstrances, communications, etc., from public bodies.

Mr. Dixon of Silver Bow sent up a report.

The President: The report of the Chairman of the Judiciary Committee will now be read.

The Clerk read as follows: Mr. President, your Committee on Judiciary, to whom was referred Proposition No. 37 as to the construction of words, have directed me to report that they are of the opinion that the matter to which said proposition relates is sufficiently provided for by Section 39 of the Bill of Rights already adopted by this convention. Your committee therefore recommend that said proposition be not adopted.

August 9th, 1889. (Signed) DIXON, Chairman.

The proposition to which the above report referred was as follows: Proposition by Robinson of Deer Lodge. Construction of words. That wherever in this constitution the word "may" occurs the same shall be construed to be directory, and wherever the word "shall" occurs the same shall be considered to be mandatory.

The President: What is the pleasure of the convention?

Mr. Bickford of Missoula: I move the report of the committee be adopted.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Missoula (Mr. Bickford) and a vote being taken the same was declared carried.

The President: Unfinished business is now in order. The convention had under consideration at its adjournment a substitute for Sections 2 and 4 by Mr. Kanouse of Meagher to which the gentleman from Silver Bow offered an amendment.

Mr. Warren of Silver Bow: I move that the consideration of the substitute be indefinitely postponed

The President: The Chair desires to state to the gentleman that while he entertained a motion to indefinitely postpone an amendment yesterday inadvertently that it is not strictly in accordance with the rules, for the reason that the same object is attained by a vote upon the question, and the only object of indefinitely postponing is to take the matter entirely from before the session, and as there is nothing in the amendment that is construed to be of that character, the rule does not apply.

Mr. Callaway of Madison: For two days this convention wrestled with the question of the location of the temporary capital—(interrupted.)

The President: Will the gentleman allow the Chair to state the question before the convention? There is an amendment offered to this substitute by the gentleman from Silver Bow. It is the desire to have that amendment considered. It was moved and seconded that the amendment be adopted. It contained a proviso of the substitute offered by the gentleman from Meagher (Mr. Kanouse) containing a proviso that the temporary capital of Montana should be located at Anaconda.

Mr. Warren of Silver Bow: I move the adoption of the substitute.

The President: The gentleman probably means the amendment. The question is upon the amendment of the gentleman from Silver Bow, and the gentleman from Madison has the floor.

Mr. Warren of Silver Bow: I ask for the present to withdraw the amendment.

The President: The gentleman withdraws the amendment, and the question is upon the substitute.

Mr. J. R. Toole of Deer Lodge: If the amendment is withdrawn, Mr. President, I move the previous question on the substitute

The President: The gentleman from Madison has the floor. The motion is not in order at present.

Mr. Callaway of Madison: Mr. President, I beg the indulgence of the convention to make the motion that I will make before I take my seat. For two days we have wrestled with this question and without result All has been in vain. I think it is well understood by the gentlemen of this convention what is my position upon this proposition I say to you now, Mr. President, and gentlemen, that if the capital remains at Helena I will be satisfied. (Applause) And more than that I will take the stump in support of the adoption of the constitution. It would, however, perhaps be modest on the part of Helena to be generous to the rest of the Territory. Personally, I prefer another place than Helena, yet about that matter I do not care. Madison County has been referred to and the question of dragging the capital from Virginia City to Helena has been broached. Mr. President, we have no ranklings in our breast. Madison County has no feeling of pique about that matter, but I desire to say on this proposition as on every other one, a free fight—a free ballot and a fair count. I think that perhaps we cannot today determine this matter. We have some matters before this convention that I believe if my motion prevails we can adopt this constitution and by Sunday have it before the Committee of Phraseology and Revision. I think it will save that much time. Therefore, Mr. President, I move you that this matter be postponed until Monday afternoon, and with this assurance that while I say to these gentlemen that I will be satisfied with the action in the event the capital remains here, but I shall as long as there is hope for any other place, vote against Helena.

The motion was seconded.

The President: It is moved and seconded that the further consideration of the entire subject affecting the capital be postponed until Monday afternoon.

Mr. Warren of Silver Bow called for the ayes and nays.

The President: If there be no objection the ayes and nays will be entered on the journal.

The Clerk called the roll

The vote stood as follows:

Ayes: Browne, Buford, Bullard, Burns, A. F.; Burns, A. J.; Burns, Edward, Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Craven, Gillette, Goddard, Hammond, Hershfield, Hickman, Hobson, Joy, Joyes, Kanouse, Loud, Luce, Maginnis, Mayger, McAdow, Middleton, Muth, Myers, Parberry, Rotwitt, Toole, Jos. K.; Watson—36.

Nays: Bickford, Brazleton, Breen, Courtney, Dixon, Durfee, Fields, Gaylord, Graves, Hartman, Haskell, Hatch, Hogan, Kennedy, Kohrs, Marrion, Mitchell, Ramsdell, Reek, Robinson, Rickards, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Witter, Mr. President—30.

Absent: Burleigh and Webster—2.

Paired: Aiken & Gibson, Dyer & Knippenberg, Eaton & Knowles—6.

The Chair announced the vote and declared the motion of the gentleman from Madison (Mr. Callaway) adopted

Mr. Marrion of Missoula: I move that we now adjourn until Monday at four o'clock.

The President. The motion is not in order. If the gentleman desires to fix Monday at four o'clock the time at which to adjourn, that motion will be in order.

Mr. Marrion of Missoula: Then I move that when we adjourn we adjourn until Monday at four o'clock.

The motion was seconded.

The President: The question before the convention is that when the convention adjourn it adjourn until Monday at four o'clock.

The Chair put the said question on the motion of the gentleman from Missoula (Mr. Marrion) and a vote being taken the same was declared lost.

Mr. Marrion of Missoula: I desire to be excused until Monday at four o'clock.

The President. If there be no objection the gentleman will be excused until Monday at four o'clock.

Mr. Luce of Gallatin: If the convention will indulge me I would like to make a motion and that is that this convention tender a vote of thanks to Senators Stewart, Reagan and Plumb and to Major Powell for their very interesting and instructive addresses.

The motion was seconded.

The Chair stated the motion.

Mr. Callaway of Madison: I move to amend by asking the President of this convention in person to tender the thanks of the convention.

Mr. Luce of Gallatin: I accept the amendment.

The President: The amendment is accepted.

The Chair put the question on the motion of the gentleman from Gallatin (Mr. Luce) and a vote being taken the same was declared carried.

Mr. Marshall of Missoula: I move that the convention now resolve itself into Committee of the Whole to consider Proposition on Public Lands, I believe No. 34.

Mr. Bullard of Jefferson: I would like to be excused until Monday.

The President: The gentleman will be excused. The question now before the convention is that the convention do now resolve itself into Committee of the Whole for consideration of Proposition No. 34.

Mr. Joy of Park: Before the motion is put I would like to be excused until Monday four o'clock.

The President: The gentleman will be excused until Monday at four o'clock.

Mr. Durfee of Deer Lodge: I would ask to be excused until the same hour.

Mr. Hartman of Gallatin: Mr. President, I would also ask to be excused until the same time.

The President: If there be no objection these gentlemen will be excused The question now before the convention is, that the convention resolve itself into Committee of the Whole for the consideration of Article on Public Lands.

Mr. Witter of Beaverhead: Would it not be in order to suspend the rules and consider this in convention?

The President: It could be done by unanimous vote and suspension of the rules.

Mr. Bickford of Missoula: I believe, Mr. President, that if this proposition could be considered in convention it would save considerable time.

Mr. Witter of Beaverhead: I would move that the rules be suspended and this proposition be considered in the convention.

The motion was seconded.

Mr. Marshall of Missoula: I will withdraw my motion.

The President: The gentleman withdraws his motion. The question now is that the rules be suspended and that the convention proceed to consider Proposition No. 34 and associate with it Propositions No. 23 and 35. The adoption of the motion requires a two-thirds vote.

The Chair put the question on the motion of the gentleman from Beaverhead (Mr. Witter) and a vote being taken, the same was declared carried.

The Clerk read Proposition No. 23 as follows: Section 1. None of the lands granted by Congress to the State of Montana, for the support of common schools, for the establishment and maintenance of a School of Mines, State Normal Schools, Agricultural Colleges, a State Reform School, and a Deaf and Dumb Asylum shall be sold, granted or disposed of in any manner; but the same may be leased under such regulations as the Legislative Assembly may provide by law, not inconsistent with the laws of Congress in force at the time the same may be leased. Section 2. The moneys, profits and proceeds arising from the public lands shall be used and devoted exclusively for educational purposes, and it shall be the duty of the Legislative Assembly to enforce this provision by appropriate legislation.

ARTICLE

Exemptions.

Section 1. The Legislative Assembly shall provide liberal exemption laws.

Mr. Kanouse of Meagher: I move, sir, that Section 1 as read by the Clerk be stricken out and Section 1 of Proposition No. 35 be substituted in lieu thereof.

The motion was seconded.

The Chair stated the motion.

The Clerk read Proposition No. 35 for the information of the convention as follows:

ARTICLE
Public Lands.

Section 1. All the public lands of the State are held in trust for all the people; and none of such land nor any estate or interest therein, shall ever be disposed thereof except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the State; nor shall any lands which the State holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States.

The Chair put the question on the motion of the gentleman from Meagher (Mr. Kanouse) and a vote being taken, the same was declared carried.

Mr. Marshall of Missoula I move that Proposition No. 34 be added to Proposition No. 35 as just adopted, as subsequent sections, commencing with Section 2.

The motion was seconded

The Chair stated the motion.

The Clerk read Proposition No 34 for the information of the convention, as follows:

ARTICLE.
Public Lands

Section 1 The lands granted to Montana by the act of Congress, approved February 22, 1889, entitled "Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana and Washington, to form constitutions and state governments and to be admitted into the Union on an equal footing with the original states and to make donations of public lands to such States for the support of common schools or which may hereafter be granted for that purpose, shall be classified by the Board of Land Commissioners as follows· First, lands which are valuable only for grazing purposes; second, those which are principally valuable for the timber that is on them; third, agricultural lands; fourth, lands within the corporate limits of any incorporated town or city or within a mile of such limits, and which are worth more than Fifty Dollars ($50) per acre

Section 2. The lands of the first of said classes shall not be sold, but shall be leased, under such rules and regulations as may be prescribed by law. The lands of the second class may be sold or the timber thereon may be sold, under such rules and regulations as may be prescribed by law. The agricultural lands may be either sold or leased, under such rules and regulations as may be prescribed by law. The lands of the fourth class shall be sold in lots of not more than five acres each, and not more than ~~one~~-half of any one tract of such lands shall be sold prior to the year 1895.

Section 3. None of the lands granted for common schools shall be sold for less than ten dollars ($10.00) per acre, and no lease of such lands shall be for a longer term than five (5) years, unless the Congress shall amend the Act referred to in Section 1 of this Article so as to permit longer leases

Section 4. All other public lands may be disposed of in such manner as may be prescribed by law.

The President· The question is upon the adoption of the motion to attach Proposition No. 34 to Proposition No. 35 and make it a part thereof.

Mr. Eaton of Park I desire to call attention to the fact that my understanding is the rules were suspended so that Proposition No. 23 should be considered by the convention direct, and we seeem to be also considering and adopting Proposition No. 35 without ever going into Committee of the Whole, and I suggest that a like resolution be passed governing this.

The President: The Chair embraced those two propositions in the motion. The Chair put the question on Proposition No 23 and the associate propositions.

Mr Bickford of Missoula: I wish to call the attention of the convention to the fact that the first portion of Section 1 of Proposition No. 34 is included in Proposition No. 35, which has already been adopted as a substitute for the first section of Proposition No. 23—in other words all that part of Section 1 which recites the granting of lands by the government to the states is recited in Proposition No. 35, so that we may with propriety strike out all of that part of Section No. 1 of Proposition No. 34 to and include the word "purpose" in line sixth thereof; in other words this part may be stricken out Section 1 to "lands granted to Montana by the act of Congress provided February 22, 1889" entitled "An Act to provide for the division of Dakota into two states to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states for the support of common schools or which may hereafter be granted for that purpose." So much of said section, Mr. President, may be stricken out, and in lieu thereof, just add the words "said lands" and number it Section 2 so that it shall read "said lands shall be classified by the Board of Land Commissioners as follows: Then that would make Section 2 of Proposition No. 23, and would provide the manner in which the lands would be disposed of. I think the gentleman from Missoula will agree with me that this is the proper thing to do. As a substitute I now move you that all of Proposition No. 34 up to and including the word "purpose" in the sixth line thereof be stricken out, and that the words "Section 2" and the words "said lands" be added just before the words "shall be classified."

The motion was seconded.

The Chair stated the motion.

Mr. Luce of Gallatin: I suppose that we are acting under the rules of the convention and cannot go back to Section 1 as already adopted.

The President: That could not be reached except by reconsideration.

Mr. Luce of Gallatin: This is the difficulty of not going into Committee of the Whole. I want to call attention to one thing here in this Article 35 (reading): "All the public lands of the state are held in trust for all the people." I suppose that the definition of public lands may cover all those that are enumerated here in section 1 of the proposition offered by the gentleman from Missoula (Mr. Marshall), but I think that in Section 1 that they should be held in trust for the people for the respective purposes for which they were granted. That strikes me to be the proper proposition to be in there, so that we will have some definition of what public lands are. Those lands that have been granted by the Enabling Act of Congress, I suppose, are intended here to mean the public lands of the state, but it seems to me this would be a better definition of them, and the trust for which they are held should be better defined, for the several purposes for which they were granted by the act of Congress.

Mr. Maginnis of Lewis & Clarke: I think that is correct. If my memory serves me, Mr. Rickards covered that in the Article on Education.

Mr. Luce of Gallatin: If that be so then this amendment might not be offered.

Mr. Bickford of Missoula: While we are upon this proposition I will state for the information of the gentleman that this section was drawn with particular reference to the report of the Committee on Education, and that in all probability the grant will be found to be covered by the report and that the uses are not only defined by the act donating the lands to the state, to which we may refer, if in anyone's a doubt arises, but the lands can only be applied to that particular purpose to which they were dedicated, under any circumstance.

The President: The question now is upon the adoption of the amendment offered by the gentleman from Missoula.

Mr. Kanouse of Meagher: I move to amend the motion.

The President: The motion would not be in order. The amendment is an amendment to an amendment and another amendment at present would not be in order.

Mr. Kanouse of Meagher: I will simply suggest, sir, then the propriety of modifying that motion so that for the purpose of consideration that portion of Section 1 of Proposition 34 after the word "purpose" in line six should be added to and become a part of Proposition No. 35 by inserting after the words "United States" the words "said lands."

Mr. Bickford of Missoula: I accept the suggestion of the gentleman.

Mr. Rickards of Silver Bow: I move that we resolve ourselves into Committee of the Whole for the consideration of these three propositions.

The motion was seconded.

The President: The rules have been suspended and the convention resolved to proceed to the consideration of these articles, and of course if you are resolved upon that I presume the gentleman's motion will be in order. The Chair will put the motion.

Mr. Goddard of Yellowstone: I rise to a point of order. I do not believe this motion is in order unless the convention reconsider the vote.

The President: It would not be except by unanimous consent or reconsideration.

Mr. Rickards of Silver Bow: I do not wish to infringe upon the rules, but I wish to state that I confess to this convention that I think that there are parliamentary difficulties in the way of intelligently considering these three propositions in convention. I believe that time could be saved and more intelligent action taken if we resolve ourselves into Committee of the Whole. I confess to you, Mr. President, and gentlemen, that I cannot keep track of the matter in convention as we are going. That is my reason for making the motion.

The President: There is a parliamentary rule that a motion to suspend the rules cannot be reconsidered.

Mr. Rickards of Silver Bow: I withdraw my motion then.

The President: The question now before the convention is upon the adoption of the amendment offered by the gentleman from Missoula, which is further amended by consent to attach Section 1 of Proposition No. 34 and make it a part of Section 1 of Proposition No. 35, and then add the remaining sections of Proposition No. 34 to Proposition No. 35. That includes the whole matter.

Mr. Hickman of Madison: I would like to ask a question. We have stricken out, I believe, all down to the word "purpose." Now, sir, as we attach this to Section 1 of Proposition No. 35, will the remaining portion of Section 1 of Proposition No. 34 be susceptible to amendment afterwards?

The President: Yes, sir; any portion of the whole matter will be subject to amendment.

The Chair put the question on the motion of the gentleman from Missoula and a vote being taken, the same was declared carried.

Mr Reek of Deer Lodge: I would like to ask if Sections 2, 3 and 4 of Proposition No. 34 are added to Proposition No. 35?

The President Yes, sir.

Mr. Reek of Deer Lodge: I move then that Section No. 3 be stricken out. Section 3 is included in the Enabling Act as I understand

The motion was seconded

Mr. Kanouse of Meagher. I move to amend Section 1.

The President: The motion to strike out Section No. 3 will take precedence of that motion.

Mr. Marshall of Missoula: Upon the proposition to strike out Section 3, it is true it is a repetition of the act of Congress I believe—"None of the lands granted for common schools shall be sold for less than ten dollars an acre." That is what the act of Congress says, and I suppose it is proper for us to adopt it in our Constitution in accordance with the Enabling Act. I suppose the act of Congress would bind us whether we put it in our constitution or not, but I see no impropriety in putting in this constitution what the act requires this state to do

Mr. Bickford of Missoula: I would ask of the gentleman if the latter part of Proposition No. 35 does not cover the ground mentioned in Section 3 of Proposition No. 34? It says on line five "Nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposition and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States.

Mr. Marshall of Missoula: That is so. It might as well be stricken out.

The Chair put the question on the motion to strike out Section 3 of Proposition 34, and a vote being taken, the same was declared carried.

Mr. Rickards of Silver Bow: What has been done with Proposition No. 23? Has all of it been stricken out?

The President: No, sir; only the first part.

Mr. Rickards of Silver Bow: I move that Proposition No. 23 be stricken out.

The motion was seconded.

The President: It is moved and seconded that the remaining Section 2, and also the article in regard to exemptions of Proposition No. 23 be stricken out.

The Chair put the question on the motion of the gentleman from Silver Bow (Mr. Rickards), and a vote being taken, the same was declared carried.

The President: Proposition No. 23 is now disposed of and stricken from the file.

Mr. Luce of Gallatin sent up an amendment.

The President: The gentleman from Gallatin (Mr. Luce) offers an amendment to Proposition No. 35, which will now be read.

The Clerk read as follows: Strike out all of line one of Section 1 of Proposition No. 35 up to and including the word "people," and insert the following: "All lands of the state that have been or that may hereafter be granted to the state by Congress, and all lands acquired by gift or grant or devise from any person or corporation shall be public lands of the state, and shall forever be held in trust for the people for the respective purposes for which they have been or may be granted, donated or devised.

Mr. Stapleton of Silver Bow: I beg to be excused until Monday.

The President: If there be no objection the gentleman will be excused. The gentleman from Silver Bow (Mr. Sargent) desires leave of absence until Monday at four o'clock. If there be no objection leave of absence will be granted.

Mr. Haskell of Dawson: I move the adoption of the amendment of the gentleman from Gallatin.

The motion was seconded.

The Chair stated the motion.

Mr. Luce of Gallatin: In examining Proposition No 17, Mr. President, I do not find that any lands have been defined as public lands. Section 2 provides as follows: "The public school fund of the state shall consist of the proceeds of such lands as have been heretofore granted or may hereafter be granted to the state by the general government, known as school lands," etc. That is the article providing what shall be public school funds of the state There has been no definition of public lands in this state that I know of, and I think it will be very proper and very wise and cautious measure to define what are the public lands.

Mr. Bickford of Missoula: I would say that Proposition No. 35, as it now stands, covers all the lands that can be in any way acquired by the state. The general term used in the first part of Section 1 of Proposition No. 35 is general enough to include all public lands. If ever the courts are called npon to determine what are the public lands, and what class they may belong to, they have the United States law making the donation in which to refer in order to determine that question, and for us to put into the section that construction of the law will be useless. The courts have already done that. The courts have in many cases said what public lands are. The use to which these public lands are to be put is defined by the act of Congress itself, and this first section or clause in Section 1 of Proposition No. 35 has all that is necessary for us to say in order that the court or that the people, for that matter, may know what is meant. It says "All public lands of the state are held in trust for all the people, and none of such land nor any estate or interest therein shall ever be disposed of except in pursuance of general laws provided for such disposition, nor unless the full market value of the estate or interest disposed of to be ascertained in such manner as may be provided by law, be paid or safely secured to the state." Now, that covers the whole proposition. The legislature under that may prescribe a particular method of disposition of them—may prescribe the officers who shall have the power of disposing of them; but under the restrictions of Congress they may be disposed of in no other manner than that prescribed by law of the United States. I believe in leaving it to the legislature to prescribe the will of the people in relation to these public lands.

Mr.. Luce of Gallatin: I am not able now to refer to a decision that held that after the title once passed into a state the control of the general government over that title is lost, and [illegible] think the [illegible] to the munificent grant of the Congress of the United States to the Territory of Montana for the several purposes, that that grant should be recognized and a provision made here to the effect that it shall be held in trust for the people of the several trusts for which it was granted. I am not particular about defining what are public lands, but there may be some question as to the question hereafter; for instance, I find in this Article No. 17 on Education that they provide for lands that may be acquired by gift, grant or devise Now, whether these lands will be public lands or not might be a question, and I think that all lands granted to the State of Montana should be deemed and held to be public lands, and I think further that those several classes of lands—the different grants—should be held in trust for the people for the respective purpose for which they were granted, so that no legislature may ever take it in its power, or think it has the power to dispose of school lands for the purpose of a university, or university lands for the purpose of a School of Mines, or the lands that are granted for the School of Mines, for the purpose of an Agricultural College. That is my object in amending this section, and it may be as my friend has said that this proposition covers all that I have recited, and I am willing that he may amend it by saying that all the public lands are held in trust by the people for the several purposes for which they have been or may be hereafter granted, donated or devised, if it suits the gentleman better. I am not particular about the language.

The Congress may define that all these lands that are given to the state are public lands, but there has been no such difinition yet, and I think it is very proper for this convention to define it in some manner. The legislature may undertake, as I say, to dispose of these lands indifferently, with the understanding or the idea that after the people have once completely passed that then the general government can no further control, but so long as the title remains with this condition which the courts may construe to be a condition subsequent, and not a condition precedent, prevails I say that whenever the title gets in that condition the United States, in my opinion, cannot control it within the state, and if the legislature should assume the authority to sell the public school lands of this state and divert that money for some other purpose, why I do not understand how the laws of the United States can conflict or interfere, how the officers authorized to dispose of them as lands could be enjoined by reason of this condition that has been imposed upon the title of these lands by the government of the United States I think that that much respect should be paid to this granting clause that has given us these lands, that we pledge ourselves never to divert one dollar from the purposes for which they were granted severally.

Mr. Middleton of Custer called for the reading of the amendment

The Clerk read same for the information of the gentleman.

Mr Middleton of Custer. If I understand the purport of the amendment aright, the effect of it would be to prohibit forever the sale of these lands If they are held in trust for the people forever the provisions here in the remainder of the section certainly could not be done; it would either be inconsistent with the rest of the section or else it would be a perpetual bar to the sale of a single acre of these public lands. It seems to me that the section as it stands covers the matter sufficiently, and this convention does not want to adopt any such provision or an amendment embodying such a provision as that these lands shall be held in trust forever.

Mr. Luce of Gallatin· The word "forever" adds nothing to this Section 1 of Article 35 It can be stricken out.

Mr Hershfield of Lewis & Clarke: I would like to ask the gentleman the effect of the word "hereafter" upon lands which would subsequently be granted to the State of Montana for irrigating purposes. Supposing that we would want to dispose of that land for immediate cash; according to the wording of your amendment, "hereafter," we cannot dispose of it in that way.

Mr. Luce of Gallatin: I move that the word "forever" be stricken out.

Mr. Hershfield of Lewis & Clarke: "The lands granted to us hereafter." Supposing we obtain a grant of land for irrigating purposes, which we hope to sometime or other, then these lands would come under the same restrictions as the lands which have already been granted to the state.

Mr. Luce of Gallatin: Only so far as holding these lands for the purposes for which they are granted. If they are granted for the purposes of irrigation you would not be allowed to take those lands after they are granted and sell them and appropriate the money from that sale for some other purpose.

Mr. Conrad of Choteau: You would have to dispose of them at the time limited here.

Mr. Hershfield of Lewis & Clarke: My impression is that that word does not cut much figure one way or the other, and it may lead us into difficulty.

Mr. Luce of Gallatin: The gentleman from Meagher (Mr. Kanouse) says he has an amendment which will cover it all. I will accept it.

Mr. Marshall of Missoula: For the benefit of the gentleman from Lewis & Clarke I would say, there is an express provision—"Nor shall any lands which the state holds by grant of the United States, in any case in which the manner of disposition and minimum price are so prescribed, be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States." Unless the United States grant this land for irrigating purposes—unless there is a manner of disposition prescribed in the grant, there is nothing to prevent it from doing so. Mr. Rickards of Silver Bow. All that I desired to do was to call the attention of the convention to the fact that in Proposition No. 17, Article on Education, as reported from the Committee on Education, the school lands are already well guarded in these words: "The funds of the State University and of the several state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated"

The President: The gentleman from Meagher (Mr. Kanouse) offers an amendment which the Clerk will read.

The Clerk read as follows: Add after the words "In trust for the people" the words "To be disposed of as hereinafter provided," so as to make it read as follows: "And all lands acquired by gift or grant or devise from any person or corporation shall be public lands of the state. and shall be held in trust for the people, to be disposed of as hereinafter provided."

Mr. Luce of Gallatin: I will accept the amendment.

The President: The gentleman accepts the amendment. The question is now upon the adoption of the amendment offered by the gentleman from Gallatin as amended by the gentleman from Missoula (Mr. Kanouse).

Mr. Bickford of Missoula: I desire the indulgence of the convention for one moment, and to call the attention of the gentleman to the fact that his amendment is covered not only by Section 1, but it is also covered by the report of the Committee on Education; in other words, we are getting ourselves into the same condition with Proposition No. 35 we did with the report of the Judiciary Committee; we are getting in surplusage; we are getting in conflicting provisions, and that Section 1 of Proposition No. 35 covers everything that is attempted to be covered by the various amendments offered here, when it is taken in connection with Proposition No. 17 on Education. There is nothing that can escape, nor can there be any misapplication of the funds derived from the sale of the public lands. Section 12 covers a portion of the ground, the very last section. Section 1 of Proposition No. 35 provides (here the gentleman read Section 1, Proposition No. 35). As soon as the title is acquired by the state they become public lands, and they may be designated in all proceedings as the public lands. They are a part of the donation of the United States which is given to the State of Montana to be applied to a particular use or to a particular purpose. That purpose is defined in the act which donates the land. The manner of selecting the land is also provided for by a general law, and the particular board of persons entrusted with the selections of those lands has been pointed out in Section 4 of Proposition No. 17, which provides that the Governor, Superintendent of Public Instruction, Secretary of State and Attorney General shall constitute the State Board of Land Commissioners. Now, it will no doubt be the duty of that board in the laws which will be enacted by the state to choose certain lands for certain purposes. Their report will designate the particular purpose to which the lands selected shall be applied; their report will set apart those lands to that particular use, and under the power just granted them by law they can act and set apart the land only to the use designated by the act of Congress. Any act of theirs setting out any other land to any other purpose than that laid down in the act of Congress would be simply a nullity. Then, I say that Proposition No. 35 covers the ground as to the duty of the Board of Land Commissioners, as it is called, as provided in Section 4, and that the people have a right to an absolute safeguard that these funds will remain inviolate—that the proceeds of this land will remain the property of the people; that it cannot be disposed of except in the manner provided by law. Therefore, I say that the amendment is useless If the proposition should go to the Committee on Adjustment and Phraseology, it will become necessary for them to strike out this, because they will find, on investigation, if not an absolute conflict, at least it is surplusage and something that should be stricken out. The provision relative to the disposal of the land is left to the legislature—the manner of disposing of the land is left to the legislature, except that in the proposition No. 34 the lands are classified into three or four separate classes. In all states where public lands are entered for school purposes, the laws enacted by the legislature have been conformed to the donations made by the Congress of the United States. I say that the ground is covered already by the section.

Mr Callaway of Madison: I regret that I am compelled to disagree with my learned friend from Missoula on the proposition. If I understood the amendment offered by the gentleman from Gallatin, it is that the several grants given by the United States to the State of Montana shall be kept separate—their funds shall be kept separate; they shall be used for no other purpose; and the object of that amendment is so to direct and to "mandate" the legislature, if we may use the expression, that those funds shall be kept separate. That is carrying out the intention of the act of Congress. Now, we have a certain grant for the State University, a grant for the common schools, a grant for the Deaf and Dumb Asylum, and one for public buildings, and so on; and I do say that we will leave this thing in an ambiguous condition if we do not pass that amendment or something like it. It will leave it in such a condition if this does pass that these officers he speaks of cannot divert these funds, they cannot misappropriate them, they cannot mix them together. Each fund belongs separately to itself.

Mr. Luce of Gallatin: I am out of order, but I hope the convention will indulge me Now, this Proposition No. 17 relates exclusively to lands granted for educational purposes, or that may hereafter be granted for educational purposes. It has nothing to do with the grant of the beneficiary, nor has it anything to do with the grant of lands for the benefit of the state in the erection of public buildings, nor has it anything to do with any lands that may hereafter be granted for another purpose. I think my amendment covers it all. Suppose, as was intimated by the Senator today in his argument—perhaps Professor Powell it was—that there would be lands granted for the purpose of irrigation; it never would be covered by this proposition 17 on Education, for they confine their proposition entirely to lands granted to educational purposes, and there is no declaration in that from first to last that these are public lands, or any definition of public lands I once knew a very distinguished gentleman to say that the land upon which the Interior Department in Washington is situated stands open within the meaning of the law. He was the first and only man that I ever heard make the statement, because it has been decided by different decisions of the Supreme Court of the United States that those are only public lands subject to disposition; but these are all lands held by the state. Now, I say that this includes not only the lands that have been donated for school purposes, the lands that may hereafter be donated for school purposes, or for any other purposes—for the purpose of constructing public buildings; or if any rich gentleman dies and donates a hundred thousand acres of land to the state, that will cover it and it will keep that donation separate from all others I say that there is danger of the legislature at some time taking the bit into its own mouth and rushing on and saying that it has the power to fuse these funds. Proposition No. 17, Section 12, as referred to by the gentleman from Missoula reads: "The funds of the State University and of all the other state institutions of learning, from whatever source accruing, shall forever remain inviolate," etc. Now, I want all other funds and all other donations for all other purposes kept as separate and distinct as provided for in this, and then I want a definition of what are public lands, so that there can be no confusion by any judge or any court or any lawyer, and if we say that all lands granted to the state or donated to the state or devised to the state are public lands, it covers all the lands of the state that are ever acquired for any purpose; and that the funds arising from them—that is in the language of the amendment, but it means that—all the funds arising from these lands shall be devoted to the purposes for which they were respectively granted or devised or donated, for the specific use of which they were granted. I do think that that is a very needful provision to go into this constitution, and is not superfluous to anything that has been adopted and put into this constitution so far.

The Chair put the question on the adoption of the amendment offered by the gentleman from Gallatin (Mr. Luce), and a division being called for, the same was declared carried by a vote of 22 in the affirmative to 7 in the negative.

The President: The gentleman from Meagher (Mr Kanouse) has an amendment. The gentleman offers an amendment to Section 1 by adding thereto "Provided that any of said lands may be reclassified whenever by reason of increased facilities for irrigation or otherwise they shall be eligible to different classification.

Mr. Kanouse of Meagher: I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

Mr. Kanouse of Meagher: I think it might be well to insert there after the word "reclassify" the words "By said Board," so as to show what power shall act. It suggests itself to my mind that after this Board of Land Commissioners has once classified these lands, that their powers might not be sufficient to enable them to reclassify any lands which afterwards by reason of canals or reservoirs which were determined on the first classification, as possibly grazing lands, that afterwards probably would be agricultural lands of increased value. That is the object of the amendment.

The Chair put the question on the motion of the gentleman from Meagher, and a vote being taken, the same was declared carried.

Mr. Hickman of Madison sent up an amendment.

The President: The gentleman from Madison (Mr. Hickman) offers to amend Section 2, on line one, by striking out the word "shall" and inserting in lieu thereof the word "may"; also strike out of same line the words "but shall be" and insert in lieu thereof the word "or."

The motion was seconded.

Mr. Hickman of Madison: That would make it "arid lands of the second class may be sold or leased under the rules and regulations," etc., instead of reading as it does now, the lands of the first and second class shall not be sold, but shall be "leased." Now, the difficulty would be in leasing arid lands or grazing lands. Sometimes they may lie contiguous to a man's ranch, and he may want to buy them, while perhaps it would be useless to anyone else, and he would not lease them.

Mr. Marshall of Missoula: I call the attention of the gentleman to the first class which are only valuable for grazing purposes.

Mr. Luce of Gallatin: Ranch men or farmers have no such land either contiguous or near them that they would give a good price for, and I do not understand why they should not be sold under such circumstances or why they should ever be withheld from sale I should say that there are grazing lands or in some cases timber lands that farmers would give a good deal for, say twenty acres lying contiguous to them—either of timber or farming lands.

The Chair put the question on the amendment of the gentleman from Madison, Mr. Hickman, and a vote being taken the same was declared carried.

The President There is an amendment offered by the gentleman from Missoula, Mr. Ramsdell,—an amendment to Section 2, line five.

Mr. Myers of Yellowstone: Mr. President, before you pass to the second section I desire to offer an amendment to the first.

The President: Mr. Myers of Yellowstone offers an amendment to Section 1, line nine. After the word "any" strike out the word "incorporated", and all of said section after "limits"—in other words strike out the words "and which are worth more than fifty dollars per acre."

Mr. Myers of Yellowstone: I move the adoption of that amendment.

The motion was seconded.

The Chair stated the motion.

Mr. Myers of Yellowstone: The object I have in offering that is to take the sense of the convention as to whether they desire to retain the lands adjacant to incorporated cities only, or incorporated towns. It seems to me that there are many growing little towns that there may be a valuable piece of land nearby, that it would be just as advisable to hold as any lying adjacent to incorporated cities, and I also wish to take the sense of the convention as to whether they desire to sell lands that are worth less than fifty dollars per acre. If they are going to retain any at all, I think they should just as well retain those that are less than thirty dollars an acre as those that are worth fifty dollars and over, hence I offer the amendment and hope it will prevail

The President: The Clerk will read the section as it would be if amended. The Chair would suggest the difficulty of ascertaining the value of this land, whether it should be more or less than $50.

The Clerk read the section as amended by the proposed amendment.

Mr. Collins of Cascade: I very much doubted the propriety of authorizing the Legislature to in any way or manner sell those lands and still doubt it, but the committee having this matter under consideration, having examined the matter thoroughly and reported upon it, so far as my opinion was concerned I allowed it to go in favor of that committee. But I believe, Mr President, that very little of this land will be sold in the next eight or ten years, and the little that will be sold will be within a few miles of the thriving and growing little communities scattered all over this State Those lands I believe we should reserve. I am in favor of the adoption of this amendment, but I would like to see it go a little further The one mile limit is too near; it should be made five or six miles, because school lands within six miles of any growing little town in Montana or any city or incorporated town, are valuable—are worth, if they are worth anything more than ten dollars an acre, and in the near future will be worth more than you can realize on ten dollars an acre—than you can realize on the interest, on the proceeds of the land, whether it be ten dollars an acre or twenty dollars an acre, if you hold it in perpetuity and lease it Lands far distant, at present say 200 miles from towns, may be sold, because it is a long way in the future until they will have a value exceeding ten dollars; but lands within a half dozen miles of a town have that value now, and that value would increase very fast, besides they have a leasing value, and a leasing value is more than you can realize on the purchase money. So that I am in favor of extending that limit to six miles.

Mr. Myers of Yellowstone: If the gentleman will make a motion to that effect I will accept it.

Mr. Cooper of Gallatin I hope the gentleman will extend the limit to ten miles In our valley there are any number of acres worth fifty dollars, and even more than that, within ten miles of our city.

The President: How many miles will the gentleman accept as a limit?

Mr. Myers of Yellowstone: Six miles.

The President. It will be so amended then to read within six miles.

Mr. Hershfield of Lewis & Clarke: I move to strike out six and insert three. I think six miles entirely too far off, because the character of it is not uniform. I think three miles from any incorporated town would be far enough.

Mr. Conrad of Choteau: I second the motion of the gentleman from Lewis & Clarke to amend by making it three miles.

The Chair stated the question on the motion of the gentleman from Lewis & Clarke (Mr. Hershfield).

Mr. Marshall of Missoula I want to remind the gentleman from Cascade and others that this proposition includes all the lands granted by Congress. Some of the land is granted for public buildings—the State capital. I suppose the money will be wanted to be used for that, and it cannot be raised by leasing. It certainly ought to be in the power of the Legislature to sell the lands granted for the building of the State capitol, it seems to me, so as to raise the money to be applied to the building, and it is probably so with regard to the institutions for the benefit of which lands are granted There is no restriction upon those lands by Congress as to the price. The restriction to ten dollars an acre, I believe, if I am not mistaken, in the Enabling Act, only applied to lands that are granted for common school purposes. Evidently the intention of Congress was that the other lands might be sold for cash as it was needed, and it would not intend that those lands should be sold at all, I suppose. The limitation as to price only applies *to lands granted for* common school purposes, and certainly lands that are only within a few miles of a town ought to be sold, I suppose; those granted for public buildings ought to be sold for money to be applied to the purpose of public buildings.

Mr. Myers of Yellowstone: I would say that the lands that are granted for other purposes have not been selected yet; hence there will be no danger of selecting lands near these towns, except of towns that may be plotted and laid out in the future, and this will only apply to university and school purposes.

Mr. Marshall of Missoula: My object was to limit the Legislature. Now, some gentleman has left it entirely with the Legislature without limit, and it is not probable that lands that might be leased to a good purpose and not sold for a good purpose, will be sold for a low price. School lands cannot be sold for less than ten dollars an acre.

Mr. Rickards of Silver Bow. In the Enabling Act, Section 17, which states the quantity of land and for what purpose it is donated, says: "All the lands granted by this section shall be held, appropriated and disposed of exclusively for the purpose herein mentioned, in such manner as the Legislatures of the respective States may severally provide." As Judge Marshall says, I do not think that the minimum price at which the school lands shall be sold refers to the lands donated for the purpose of public buildings at all.

The President: The question is upon the amendment offered by the gentleman from Lewis & Clarke, Mr. Hershfield, to make the distance three miles instead of six.

Mr. Collins of Cascade: It just occurred to me that the land mentioned by the gentleman from Missoula as lying near his town is the land we ought to try to protect. Now, this broad piece of land lying near Missoula can be divided into two thousand lots of one hundred feet square, or one hundred feet frontage by a little more than one hundred feet the other way, that is, at a quick calculation. Now, I believe that reasonable rental from that land would amount to a great sum of money, and that it would amount even now to fifty dollars, the amount of money that would be realized from the sale of it. That is just one instance; and the longer it remains tied up in the school fund, and the longer it remains the property of the school fund, the more valuable it becomes. When the first lease of five, ten, fifteen or twenty years has expired, the second leasehold is more valuable yet, probably double or treble or quadruple; and so on to the end of time; whereas if you sell that property today for $50—well say $100 an acre, or $500 an acre, the interest on that money would amount to quite a sum, but an insignificant sum compared to the rental. Now, this regulation holds good so far as all school lands are concerned, but it holds good more particularly to school lands lying within a reasonable distance of towns. So far as the land donated for public buildings is concerned, if that cuts any figure in this case, I would be in favor of postponing the sale of that land until such time as the convention thinks the public buildings should be built, and then selling it when we are ready to build.

Mr. Conrad of Choteau: I am in favor of selling off all the lands within three miles of the city limits. Now, this provides that they should be sold in lots of not more than five acres, and they shall not be leased for a longer period than five years. Now, we know that nobody will put up a good building on lands that are leased; so that if half is leased and good buildings put up, that would make the rest so much more valuable. We will get more out of it in that way. And then I would be in favor of line five of Section 2, where it says it shall be sold in lots of not more than five—say alternate lots of not more than five so as to enhance the property.

The President: The Chair would suggest that there might be some difficulty in determining the limits of a city if it is not incorporated. However, the amendment now offered by Mr. Hershfield of Lewis & Clarke is the question upon which the convention is to act. The motion is to strike out six and insert in lieu thereof three.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke (Mr. Hershfield) and a division being called for, the same was declared carried by a vote of 15 in the affirmative to 11 in the negative.

The President: The question now is upon the amendment offered by the gentleman from Gallatin, Mr. Luce.

Mr. Breen of Jefferson: There does not seem to be any interest taken in this matter any more, and therefore I move that we adjourn.

The motion was seconded.

Mr. Collins of Cascade. Will the gentleman allow me to introduce a resolution so that it can be referred before the motion is carried?

Mr. Hartman of Gallatin. I also ask the privilege of introducing a motion.

The President: There are already two amendments to offer to Section 2 when the convention reaches that section, one by the gentleman from Missoula, and one by the gentleman from Meagher.

Mr. Marshall of Missoula· If it is in order I move that when we adjourn we adjourn until four P. M. on Monday.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Missoula (Mr. Marshall) and a vote being taken, the same was declared lost.

The President: The gentleman from Cascade, Mr. Collins, desires to introduce a resolution before the motion to adjourn is put. The Clerk will read the resolution.

The Clerk read as follows. Resolved that the Chief Clerk be and he is hereby required to make out a payroll of the extra clerks and pages of this convention, which shall be duly certified to by the President and Chief Clerk, and at the adjournment of this convention shall be filed in the office of the Secretary of the Territory The Chief Clerk is hereby authorized and required to issue a certificate to each clerk and page, or his order, telling the service rendered and amount due, which said certificate shall be duly certified to by the President of the convention.

Mr. Collins of Cascade: I move that the resolution be referred to the Judiciary Committee.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Cascade (Mr. Collins) and a vote being taken the same was declared carried.

The President: The gentleman from Gallatin, Mr. Hartman, desires to offer the following resolution.

The Clerk read as follows: Resolved that a committee of three be appointed by the President of this convention, whose duty is shall be to carefully examine the various propositions already adopted as parts of the constitution. and those which may hereafter become parts thereof, with a view to ascertain any inconsistencies or omission which may exist in the instrument, and that authority to remedy such inconsistencies and omissions, and wherever any ambiguity or imperfection exists in the language employed, or the intention of the convention seems incompletely expressed, the committee shall remedy such defects, and report to the convention for its action.

Mr. Hartman of Gallatin: I move the adoption of that resolution.

The motion was seconded.

The Chair stated the motion.

Mr. Hartman of Gallatin: I certainly want to say that my only reason for offering that is this, that I do not believe the Committee on Revision and Phraseology has the power to carry out all that the resolution contemplates. I do not mean to reflect upon the Committee on Revision and Phraseology at all, but I do not believe that their powers would be sufficient to arrive at the end desired and contemplated by that resolution. I should also like to suggest if the resolution be adopted that the Chairman of the Judiciary Committee be made Chairman of that committee.

Mr Rickards of Silver Bow· I presume, Mr. President, that the mover of that committee has duly considered this, but the question suggests itself to my mind whether there might not be some conflict of authority between that committee and the Committee on Revision and Phraseology

Mr. Warren of Silver Bow: As Chairman of the Committee on Revision and Phraseology, I hope the resolution will prevail. I think the Chairman of the Judiciary Committee is the man above all others that should pass upon this constitution.

Mr. Marshall of Missoula· I was going to move, Mr. President, that the Chairman of the Judiciary Committee be added to the Committee on Revision and Phraseology.

Mr. Hartman of Gallatin: I will accept that amendment, with the understanding that their authority is increased to the extent as contemplated in the resolution.

The President: There is an amendment for that instead of a committee of three that a Chairman of the Committee on Judiciary be added to the Committee on Revision and Phraseology, giving power to that committee to carry out the provisions incorporated in this resolution.

Mr. Joy of Park: I would like to inquire of the gentleman who introduced that resolution if it is intended that this committee will complete its work before the convention adjourn.

Mr. Hartman of Gallatin: The intention is certainly that they shall report before the convention adjourns. My idea was to get it introduced now and to get the committee at work, so that they would not have it all to do on the last day or two of the session.

The President: The gentleman from Missoula offers an amendment that the Chairman of the Judiciary Committee be added to the Committee on Revision and Phraseology, and that that committee be given the power to carry out the provisions incorporated in this resolution.

Mr. Collins of Cascade: I would suggest that the motion be that one or two or three or four more be added to that committee—say four more. I move that four more be added to the Committee on Revision and Phraseology if it meets the views of the Chairman of that committee.

Mr. Maginnis of Lewis & Clarke: Cut it down to two.

Mr. Collins of Cascade: Well, cut it down to two.

Mr. Cooper of Gallatin: I suggest that it had better be two or three, as one of the members is not here, Mr. Webster.

Mr. Collins of Cascade: I move you then that it be three.

The President: The amendment is then that the Chair appoint three members of the convention. The question now before the convention is that the Chair add three members of the convention to the Committee on Revision and Phraseology, with provision to carry out the powers that are granted in this resolution.

Mr. Rickards of Silver Bow. Before I vote upon the adoption of that resolution and the amendment, I would like to hear from the Chairman of this committee. There are three persons on this committee all of whom are here, I believe—there is only one absent, and I would not like to vote for the adoption of the resolution of this character unless I knew that all the members of this committee were in full accord with it, for it might appear as casting some reflection upon their ability.

The President: The Chairman of the committee has assented to the proposition and recommends it. The Chair does not know that the other gentlemen are here

Mr. Middleton of Custer: It seems to me that it is unnecessary—entirely so—to add three more members to this committee. The comittee certainly are copetent to do the work, and there is enough of them. My experience has been here that the larger the committee the more difficult it is to get them together. I know that more than three-fourths of the meetings of the Judiciary Committee have been attended by a bare quorum, and I am satisfied that this kind of work will have to be done by two or three. I do not object to the resolution so far as endorsing the matters that it embodies to this Committee on Revision, Phraseology and Adjustment. I am in favor of adopting the resolution, but I do not see any necessity of increasing the number.

The Chair put the question on the adoption of the amendment to have a committee of three appointed by the President, and a vote being taken the same was declared carried.

The President: The Chair will appoint on that committee the gentleman from Silver Bow, the Chairman of the Committee on Judiciary, the gentleman from Gallatin, Mr. Hartman, and the gentleman from Meagher, Mr Kanouse.

Mr. Breen of Jefferson: I now renew my motion that the convention adjourn.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Jefferson (Mr. Breen) and a division being called for the same was declared carried by a vote of 23 in the affirmative to 19 in the negative.

The convention adjourned until Saturday, August 10th, 1889, at 10 A M.

THIRTY-FIRST DAY.

Saturday, August 10, 1889. Morning Session.

The convention was called to order by the President at 10 A. M.

The Clerk called the roll

Leave of absence was granted to the following members:

Burns, Edward, until Monday, August 12th.

Graves, until Monday, August 12th.

Reek, for the day;

Buford, until Monday, August 12th;

Hershfield, for the day;

Toole, J. K., for the day,

Dixon, for the day

The Chaplain offered prayer

The Clerk read the journal of the previous day

The President: The Chair has a communication purporting to come from some public body If the convention desires to hear the communication the same will be read by the Clerk.

The Clerk read as follows: Stuart, Montana, August 9th, 1889. President Constitutional Convention. What is the matter with Stuart for permanent capital? Citizens getting mad because no attention paid to them. Please read to the convention and oblige. (Signed) Board of Trade.

Mr. Callaway of Madison: Mr. President, four or five days ago I laid before this convention a provision to be incorporated in the constitution, but to be voted on separately, and, if carried, to be incorporated as a part of the constitution. I think it was referred to the Committee on Suffrage. It was a proposition for woman's suffrage. I would like to know what is the matter with that committee I ask that they be instructed by the convention to report. I would respectfully ask, Mr. President, that that committee report next Monday

The President Will the Chairman of the Committee on Suffrage give the gentleman the information he requires?

Mr. Rotwitt of Meagher During the excitement of the capital question the committee has not been able to hold a meeting but I believe we will be able to report today

The President The Chairman of the committee reports that the committee will probably be able to report today. If not they will no doubt report on Monday.

The convention had under consideration Proposition No. 35.

The last action of the convention was upon the adoption of an amendment offered by the gentleman from Lewis & Clarke to insert three instead of six, in line nine of Section 1, so as to read "within three miles of such limits."

Mr. Conrad of Choteau: That was carried

The President: Yes sir. There is now an amendment offered by the gentleman from Missoula, Mr. Ramsdell, to amend Section 2 on line five "Provided, however, that not more than 160 acres of land, arid or otherwise, shall ever be sold to the same person, company or corporation."

Mr. Kennedy of Missoula: I move the adoption of the amendment.

The motion was seconded.

The President: It is moved and seconded that the amendment be adopted, to insert after the word "law" on line five of Section 2 the words "Provided that not more than 160 acres, arid or otherwise, shall ever be sold to the same person, company or corporation"

Mr. Ramsdell of Missoula: I do not believe that there need be much said in support of this amendment, it seems to me that it will commend itself It is a wise provision in this respect that not over 160 acres of land should ever be sold to the same company, or corporation There may be reasons for selling grazing or timber lands in larger bodies than that and it would not really affect the interests of the people so much, but the policy of the general government has been in the last twenty or twenty-five years not to give to the same individual or company or allow them to acquire in any manner more than 160 acres. I believe it would be a good provision to incorporate in the constitution

Mr Luce of Gallatin: I am opposed to the amendment of the gentleman from Missoula, and notwithstanding it has been the policy of the government for several years to put up no lands at public sale, but to dispose of them to actual settlers, having had a great deal of experience in these land matters, I have been firmly of the opinion that the land law of public sale and private entry was best for the government and best for the people, and I can point to States now where the lands have been disposed of—for instance the State of Ohio, one of the most populous and wealthy States in the Union—the State of Indiana, the State of Illinois, and the State of Missouri—where the lands were sold. Now, so far as the public land system goes, if the lands go into the hands of private proprietors they are sold to persons who want them upon long terms of credit and so on. They are sure of their titles then, and in the settlement system there is always somebody jumping lands and consequently the Land Department at Washington is full of decisions and burdened down with perjury. I do not know that that would act in this way, but I undertook to say that the land would sell at as good a price and find buyers. If we sell at all let us sell; but my view of this matter is that they never should have been sold at all; however, it seems to be left to the legislature now to sell, and if we sell I think we should leave that matter to the legislature to meet the wants of the community in the future; and I am not at all afraid of large capitalists or wealthy men getting these lands and holding them, because there is no profit in them at all unless they can sell them, and if they are to be sold they may as well be sold to them as to be parceled out in little lots of 160 acres. I am in favor of settling up this country and getting all the lands of this future State into the hands of private proprietors, too, at the very earliest it is possible to do it, and I do say that it would be better for Montana to do that, and the arid lands of the territory should be surveyed at the earliest possible date, put up and sold, and subject to private entry at the minimum price. Then you get the title into hands of private proprietors: and the same system would work well as regards the public lands of the state, if they are to be sold at all. There are some lands that must be sold, and whenever they are sold let us have a market and not limit the market for the land, because your sales to the government amount to nothing. They would be sold to those persons, and only one person could buy 160 acres. If there is to be any sale at all of these lands, and it is necessary to sell them, and they ought to be sold, I say let us have a market for them and not limit the market. I have never been accused of being a friend of corporations or anything of that kind, but I do say that the system that limits the purchase of any commodity will work detrimentally.

Mr. Kanouse of Meagher: The fact, sir, that our homestead and preemption laws have remained on the statute books comparatively untouched is an indication that the policy that is embodied in these acts has commended itself to the great body of the American people, and I undertake to show, sir, that the policy would be comprised in something after these, "That the public lands of this country in subdivisions such as are recommended by this amendment that has just been offered, in such tracts as were suitable for homes should be owned by people of the country in fee simple absolute. I am in favor, sir, of incorporating that in the constitution. I believe in stating what the policy shall be in terms that cannot be misunderstood. I am in favor of stating that they shall be sold wherever it would be necessary they should be sold. I think, sir, that the amendment that has been offered is a good one, but I believe as I heard it read that it does not perhaps comprehend all it should. I think it is necessary to still further amend it in line four of this provision. It seems to me it is a question of whether it is preferable to have these lands covered with homes, with all the improvements permanent, as they naturally would be, that the homemaker gathers about him, or whether they should simply be covered with shacks with such bare improvements as are absolutely necessary during the short time which a renter would naturally occupy them. I am in favor of the amendment.

The President: The gentleman from Meagher offers an amendment which is germane to the subject, and if it is necessary the Chair will have it read.

Mr. Kanouse of Meagher: I would offer it as an amendment to the amendment.

The Clerk read as follows: Amend Section 2 as follows: Strike out lines four and five to and including the word "law" and insert "The agricultural lands shall be sold in lots not exceeding 160 acres, whenever the price as fixed by Section 3 herein can be obtained therefor; that whenever any of the said lands cannot be sold for said price, and so long as they shall so continue unsold, they may be leased in manner as may be provided by law.

The President: The Chair would suggest that Section 3 is stricken out There is a reference in this amendment to Section 3.

Mr. Marshall of Missoula: I think, Mr. President, if the reference be made to Section 1 it will have the same effect. Section 1 prescribes that they shall only be sold on such terms and at such minimum price as may be fixed by Congress.

Mr. Kanouse of Meagher: I suggest that the Clerk change it so that it will read Section 1.

Mr. Witter of Beaverhead called for the reading of the amendment of the gentleman from Missoula (Mr. Ramsdell).

The Clerk read as follows. Provided further that not more than 160 acres of agricultural land, arid or othrwise, shall ever be sold to the same person, company or corporation.

The President. This amendment in no wise conflicts with the other amendment and might be attached to it.

Mr. Parberry of Meagher: In the report that has been adopted of the Committee on Irrigation, it seems to me that this has been provided for better than we can provide for it here. It allows the legislature to make such laws, rules and regulations in regard to selling or leasing this land as it may in its judgment deem fit and proper. Now, I have been opposed to the selling of the land; I think leasing it far preferable, but that was settled in the adoption of the report of the Committee on Education. In regard to selling 160 acres I have the same objection that I have had all the time. If we were back in the states, where we have a regular rainfall and where every 40 acres could be cultivated, it would be very different. No gentleman has traveled over his territory and has taken any interest at all in endeavoring to find out about the water and about the land knows that nearly every bit of the water has been appropriated except in a few large streams. Now, where there is a small stream and you can get 160 acres, if you allow a purchaser 40 or 160 acres of land it virtually gives him a clear title to the 160 acres, because there is no water that can be had on the remaining acres that he will not control, that is if you sell the 160 acres that has the water and the timber on it The balance of the 640 acres never could be sold; and we are limited by the Enabling Act to the sale of 640 acres There is no person allowed to purchase more than one section, and it does not seem to me that it would work to the best interests of the school fund to restrict it to 160 acres.

Mr. Hershfield of Lewis & Clarke: I can see where this matter, if it is neglected, would lead to a great deal of fraud and speculation If an individual wants a section of land and he wants it badly he will obtain it, whether he had a right himself to purchase it or not He will get an employe or a friend to enter the land for him, and he will obtain it anyway. I think it is far more to the interests of the public lands that the individuals who want to purchase a section of land should be entitled to purchase it in his own right, and not have others go around and purchase the land for him They will obtain it anyway if they want the section of land, and we might as well let them have it in a legal and a proper way I think there is a good deal of latent mischief in that amendment, and it should not be adopted

Mr Burleigh of Custer. I fully agree with the remarks made by the gentleman from Lewis & Clarke. I do not apprehend that there is going to be such a struggle on the part of the authorities to keep this land from being sold as there will be to sell them, and I know no good reason why a man who comes here with his family and settles and wants to locate land enough to settle his children about him should not be allowed to do so. To limit a man to 160 acres, it seems to me, would be the heighth of folly. I think that every man who goes and locates should buy whatever he wants provided he pays for it. Now, in regard to the matter of irrigation, as my friend from Meagher county says. everyone knows who has been over the country and taken an observation of the conditions of things that exist, that there are 1000 acres of land that may be deprived of the benefit of irrigation by appropriating the water and putting it on the 160 acres. That is another reason why a man who goes there and wants to buy 640 acres should certainly be allowed to do it; and I am certainly opposed to this amendment in toto I am in favor of selling a man just as much as he will pay for. There is no danger of a man getting a great tract of land out in this arid country and keeping it from settlement There is another thing I do not like in this bill, that is, that none of the lands granted to common schools shall be sold for less than ten dollars an acre. Now, we propose to put that provision in the constitution. It will remain there as long as this constitution remains unaltered. Suppose after five or ten years that it will prove the case that we cannot sell these lands for five dollars an acre or two dollars an acre, and we go to Congress to modify this Enabling Act (Interrupted).

The President: Section 3 has been stricken out.

Mr. Burleigh of Custer: Well, I have no more to say in regard to that matter, but it seems to me that wisdom requires that whenever a man comes in to purchase these lands and complies with the requirements of the Enabling Act that he should be allowed to purchase what he wants. There is another thing. Where these lands remain in trust for the purposes for which they were appropriated, they are not taxable, nothing is derived from them to supply the revenues of the state; but the moment they are sold to private parties they become taxable, and I think that a very important consideration in viewing this matter from a financial point of view. I do not want to consume the time of the convention in talking this matter over, I merely give my views thus briefly, and will say that they are satisfactory to my mind.

The President: The question is upon the amendment offered by the gentleman from Missoula (Mr. Ramsdell).

The Clerk read the said amendment offered by the gentleman from Missoula.

Mr. Conrad of Choteau. I think we are all agreed upon one thing, and that is to get the most out of these lands for the school fund. Now, the question is which is the best way to work it so as to get the money out of it. I agree with Dr. Parberry. There are sections to my knowledge that have 160 acres of water frontage, and the other 160 acres lies back on the hills, perfectly arid lands; and if we allow them to buy 160 acres of this land they will practically own the rest and never will buy it, and I believe the school fund will get more out of some of these sections of land by selling the entire section.

Mr Witter of Beaverhead: It occurs to me that if there should be any abuse of this privilege, it is right and proper the legislature should attend to it, and it looks to me as if it should be left in the hands of the legislature; and as it stands now, without any further amendment, it would be left to the legislature

Mr. J. K. Toole of Lewis & Clarke: I think so far as the agricultural lands are concerned it ought to be the desire of the people of the state that they should fall into the hands of actual residents of the state, and I do not think very much of the provision that any more than 160 acres shall be sold to any one individual. The principle is entirely correct, but it seems to me that it would be impossible to enforce such a law as that in the terms of the amendment which has been sent to the Chair, because everybody knows how easy it is to violate a law of that kind A party who was in search of this sort of land could buy 160 acres, and so on along the line until he could purchase all he wanted. It seems to me that there ought to be a provision by which actual residence on the land was had, and that never should be made unless there was a provision that this agricultural land could be sold on credit. If that was done then provision could be made that before the second or another payment was made, that satisfactory proof should be made to somebody provided by law that at that time the party was in the actual residence and occupancy of the land, and in the event of his failure to make that sort of proof the land itself would be forfeited and the amount he paid also forfeited. That is my idea of it. I have put into writing the suggestion which I make, and I submit it to the convention for what it is worth (reading): "Agricultural lands shall be sold on credit in tracts not exceeding 160 acres, provided that before the second or another subsequent payment is received the purchaser shall prove to the satisfaction of such person as may be prescribed by law that he is actually residing upon the tract of land so purchased; and in case of default in any deferred payment or the interest thereon the person so defaulting for the period of ninety days shall forfeit absolutely the tract which he has purchased with any payment or payments he may have made, and the land thus forfeited shall again be sold as in the first instance." I submit this as embodying my views and offer it as an amendment to the additional section.

The President. It will be in order in its proper order.

Mr. Kanouse of Meagher. In order that the proposed amendment which has just been read may be offered at this time, inasmuch as it meets my views upon the subject, I will withdraw the amendment offered by myself to the amendment offered by the gentleman from Missoula.

Mr. Ramsdell of Missoula: I also withdraw my amendment.

The President The Chair then understands that both amendments are now withdrawn for the purpose of allowing the introduction of the amendment offered by the gentleman from Lewis & Clarke.

Mr. Luce of Gallatin: I offer this substitute for the amendment offered by the gentleman from Lewis & Clarke

The President: The Clerk will first read the amendment offered by the gentleman from Lewis & Clarke and then the substitute offered by the gentleman from Gallatin

Mr. J. K. Toole of Lewis & Clarke: My amendment would come in right after the word "law" on line five

The Clerk read as follows: Agricultural lands shall be sold on credit in tracts not exceeding 160 acres, provided that before the second or another subsequent payment is received the purchaser shall prove to the satisfaction of such person as may be prescribed by law that he ic actually residing upon the tract of land so purchased; and in case of default in any deferred payment or the interest thereon the person so defaulting for the period of ninety days shall forfeit absolutely the tract which he has purchased, with any payment or payments he may have made, and the land thus forfeited shall again be sold as in the first instance.

Mr J K. Toole of Lewis & Clarke· As there is in the line above a provision for leasing these lands, it ought to say, instead of "agricultural lands"—"When sold said land shall be settled on credit," etc.

Mr. Parberry of Meagher· I dislike a second time to express myself in regard to that, but it does seem to me that the gentleman from Lewis & Clarke is acting in the interest of the actual settler at the expense of the school fund I do not think that the actual settler should have all the advantages at the expense of the school fund.

The President: The gentleman from Gallatin (Mr. Luce) offers an amendment to that, which will now be read by the Clerk.

The Clerk read as follows· Substitute for Toole's amendment offered by Luce of Gallatin "Provided that the agricultural public lands shall only be sold to actual settlers thereon, and in quantities not to exceed 160 acres, and upon such terms and conditions as may be provided by law."

The President· The question is now upon the adoption of the substitute.

Mr. Chessman of Lewis & Clarke: I was about to say, Mr. President, that there is too much detail about this matter; that it should be entirely left to the legislature Here we tie the hands of the legislature and fix it so that they can hardly dispose of this land with any reasonable advantage to the school fund, and it seems to me that the section of itself is sufficient to be embodied in the fundamental law, and leave it entirely to the legislature so that they can dispose of it to the best advantage of the settler, to the public and to the school fund, and in such quantities as may be prescribed by law. I am opposed to tying up the hands of the legislature in all matters of title. It is good enough in a general way.

Mr Collins of Cascade The convention having adopted the policy that this matter shall be left to the legislature, it seems to me that we should not take hold of this matter in the way that we are doing. Now, I believe that this matter of disposing of public lands and of regulating the sale of water, or of disposing of the water—those two questions are the great questions to be disposed of in the interest of the people of Montana, and if we are to go upon an untrodden road, if we are to try a new policy, I would suggest that this matter be referred to a committee and that they investigate the matter in all its phases and bring in a report. Certainly if we are to branch out in a new policy, I do not think we can make a satisfactory one by trying it in Committee of the Whole or convention. The matter should be referred to a committee. My idea is that we should grapple with these subjects and insist that a new policy should be put into the constitution in regard to them, I do not think that we can do justice to ourselves nor to the people by trying to do it in this way. It should be referred to a committee, and the committee should investigate it with particular reference to this matter. But the convention having adopted the policy that these lands shall not be leased but sold, I think that this whole subject matter should be stricken out, and if I am in order I move that this whole matter, Article 35 and Article 34 be stricken out except the first line and a half—"All the public lands of the state are held in trust for all the people, and none of such land nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws—and I leave that in for the purpose of prescribing for the school lands. Now, if we want to go any further than those words imply, it seems to me we cannot do it by legislating in this manner; we want to do it by letting a committee investigate it in all its phases and report. We are having under consideration at present agricultural lands solely and purely. So far as my opinion goes it always has been and is yet, that we should not sell them at all, nor authorize the legislature to sell them, but that they should be leased on long terms. That not carrying, I am in favor of compelling the legislature to adopt a policy that the agricultural lands shall not be sold in tracts exceeding 160 acres, and that they shall not be sold except to bona fide residents. But the proposition is, can we insert this in this article, after having provided generally in the proposition on education that our policy is to leave it all to the legislature and let the legislature provide such rules as they shall see fit?

Mr. J. K. Toole of Lewis & Clarke: So far as I am concerned I am entirely contented that this matter should be left to the legislature, but upon entering the convention I found that amendments are pending seeking to dispose of these lands in a way different from what my judgment would dictate, and if the convention proposes to take hold of the subject and dispose of it, it seems to me that there should be one conclusion so far as the agricultural lands are concerned, and that is that they ought to go to the actual settlers. My friend from Meagher County (Dr. Parberry) refers to the fact that a good deal has been said about the actual settler, and that the lands should be sold to the best advantage for the school fund. I think that no better possible way could be devised in the interest of the school fund than to keep these lands in the hands of the actual settlers, so that they would be occupied and cultivated and produce something which would be subject to taxation. If the lands should be disposed of at all as a separate and distinct class, as agricultural lands, and these lands have been classified, they ought to go to the actual settler. Everybody knows, who is conversant at all with the topography of this country, that we have plenty of purely pastural lands—grazing lands—and that we ought not to permit them to go to some other purpose, or to be used for purely speculative purposes. I am entirely contented that the whole subject shall go to the legislature, providing they shall be disposed of in the manner provided by law; but if anything is to be done we ought to put such restrictions upon it as will ultimately result in the agricultural lands being occupied by the actual settlers.

Mr. Luce of Gallatin: If in order I would like to withdraw the substitute I sent up and offer another one.

The President: The gentleman from Gallatin withdraws the substitute offered, and desires to offer another one.

The Clerk read as follows: Substitute for Toole amendment. Provided that in the sale of agricultural lands actual settlers thereon shall have the preference under such conditions as may be prescribed by law"

Mr. Luce of Gallatin: I move that that substitute be adopted.

The motion was seconded.

The Chair stated the motion.

Mr. Burleigh of Custer: I am satisfied that my friend from Lewis & Clarke, who has introduced the substitute for the amendment here, either goes too far or does not go far enough. He goes too far, in my judgment, in this, that he proposes to insert into this Constitution—place in this constitution a matter which I think legitimately belongs to the legislature. If he is right in his position and I am wrong, then he does not go far enough, for carrying his proposition out to its fullest and most extended results, it provides the manner in which these lands shall be prescribed for. It is purely a matter of legislation, and if the object is to make a provision for disposing of these lands ultimately then he wants to go on and provide for office rent—office hire, and the appointment of a chief and necessary clerks. Now, I think that this is a matter of pure legislation and should be left to the legislature, and not incorporated here. This is the position which I take, and I have not seen anything to indicate that my position is not correct.

Mr. Hershfield of Lewis & Clarke: I would just like to call the attention of the convention to Section nine of Proposition 28 which reads: "In the disposition of the public lands granted by the United States to this state preference shall always be given to actual settlers thereon." This was *the suggestion made by the gentleman from Gallatin County;* and further it says, "and the Legislative Assembly shall provide by law for carrying this section into effect.

Mr Marshall of Missoula: It seems to me that we might safely leave it to the legislature to prescribe rules and regulations for the disposition of the agricultural lands as in the original proposition offered.

Mr. Knowles of Silver Bow: That provision was only intended to apply to those cases where persons are now actually occupying the school lands, or that may occupy them before they are surveyed. They go onto school lands and occupy them, and make improvements upon them, and when they come to be sold other persons might come in and bid more for them on account of these improvements; and for that reason it was put in there that they should be sold—those that are actually occupied. But as I understand the provision of the amendment offered by the gentleman from Lewis & Clark it is to provide for persons that may go onto lands under contract to purchase. We will have no such pre-emption laws such as have been enacted by Congress providing for the going on and filing and settlement, and such matters as that, but we will have these lands for sale, and we can provide such conditions in the making of the sale as we see fit, and after we have entered into the contract of sale the parties may go on and by complying with the contract become purchasers. But this provision that we have already only applies to lands where parties are in the actual occupancy of those lands now or may become actual occupants before they are surveyed.

Mr. Witter of Beaverhead: It appears to me that the gentleman from Silver Bow puts rather a big construction upon that part as to the privilege of the actual settlers. It seems to me that would apply to any lands offered for sale in that way

Mr. Knowles of Silver Bow: Undoubtedly there will be provisions by the legislature preventing parties from trespassing on these lands—going upon them and taking them and using them—as there ought to be—or taking them and going and using them an exhausting the soil. There ought to be such provisions and there undoubtedly will be. But here are parties that have already settled upon these school lands before they are surveyed, and there will be others and that will settle upon the school lands We will have a small portion of the domain of Montana surveyed, and in relation to those, why, where they have gone on there under such circumstances, they ought to have the preference in the purchase of them But as I said in relation to these other lands, there will be legislation to prevent people from going upon them and using them and cutting the timber or exhausting the soil or doing anything that will impair value.

Mr. Witter of Beaverhead: I think that we would agree upon the proposition that this matter should be left with the legislature. I believe the legislature will have to take this matter in hand as to the regulation of this land, and for that reason it should be left to them and not encumber this constitution with any provisions here unless they are effective. As to the matter of pre-emption, it is true that the legislature cannot provide for anything like pre-emption law, neither do I believe that this constitutional convention can, and as we cannot perfect the pre-emption law I believe we had better leave it as it is, with as little legislation as possible.

Mr. Carpenter of Lewis & Clarke: I think that the amendment and the amendment to the amendment would both be unwise. The question immediately before the house is, of course, the amendment to the amendment, but that and the amendment are the same in one respect, that is limiting the number of acres of agricultural land to be sold to 160 acres. I will, however, say a word upon that. I think this section ought to remain as it is with the exception of the limitation to 640 acres. That, I understand, is already provided for by the Enabling Act, but the Enabling Act may be changed It may be wise to put some limitation upon the power of the legislature as to the number of acres to be sold, but I think it would be absurd to limit it to 160. The ordinary agricultural land in this territory is not very desirable. I think the worst curse to a poor man would be to advise him to purchase 160 acres of land unless there was water upon it—unless he had it irrigated and could use it for the protection of crops. A poor man going on 160 acres of agricultural land as it is ordinarily situated in this land would starve to death. He would hardly make a quarter a day as wages, so I think that would be wrong. It would be a damage to a poor man and to every other man, unless under the most favorable conditions and circumstances there was a stream for the purpose of artificial irrigation, which he cannot afford as a rule, to bring about on that number of acres. But probably there ought to be some limitation upon the power of the legislature, and there might be a legislature sometime or other that would provide for selling twenty thousand acres in a body, so that there would be no competition and the lands would be squandered in that way. As to the provision for actual settlers, it seems to me that would be unwise. As a rule we would not have actual settlers under our system as provided by this constitution. A man would not settle on bodies of land: he would be very foolish to settle. He would look around to see how much the land would cost him, and then provide for settlement upon it. And further it seems to me that the amendment offered by the gentleman from Lewis & Clarke is a very harsh one, upon the poor man particularly, providing for a forfeiture of everything he has paid on it, if a bad season should come and he was unable to make the second or third payment Now, Mr. President, it seems to me that this credit system is bad anywhere it is carried out with a liberal policy, but to adopt the credit system with that harsh rule provided in the amendment might ruin every hard working poor man. It seems to me that the section ought to remain as it is, with the simple limitation that no quantity in excess of 640 acres should be sold to any one person, corporation or company.

Mr. Luce of Gallatin called for the reading of the substitute offered by himself.

The Clerk read the same as follows: Substitute for Toole amendment. Provided that in the sale of agricultural lands actual settlers thereon shall have the preference under such conditions as may be prescribed by law.

Mr. Luce of Gallatin: I want to say that when I offered that I had in mind this section that was called to the attention of the convention by the gentleman from Lewis and Clarke (Mr. Hershfield). When I offered it I supposed it related to school lands, but on reading Section 9 of Proposition No. 28 I find it is not limited. That section we have already adopted as a part of the constitution, and it provides "In the disposition of public lands granted by the United States to this state preference shall always be given to actual settlers thereon, and the Legislative Assembly shall provide by law for carrying this into effect." Now, then, in that condition the substitute that I offered is precisely in effect what Section 9 is, that we have already adopted. Again, according to the proposition or the substitute offered by the gentleman from Lewis & Clarke, it is in conflict with Section 9, Proposition No. 28, directly, because that provides that the preference shall be given to actual settlers thereon. "And the Legislative Assembly shall provide by law for carrying this section into effect." Instead of that his position is to legislate here now and take the power away from the legislature that we have already granted. My substitute for his amendment I will withdraw because I think it is covered by Section 9, that has already been adopted, and I think that if we have adopted this section that no conflicting section should be adopted by this convention. This section offered by the gentleman from Lewis & Clarke is pure legislation and takes away this power which you have already granted, or a part of it, instead of leaving it to the Legislative Assembly which we have provided in a mandatory way shall provide by law to carry the section into effect. If we adopt the substitute offered by the gentleman from Lewis & Clarke we take away from the legislature the power to carry that proposition into effect so far as legislating in relation to sale of land is concerned. The Enabling Act provides—my attention is called to the fact that the legislature provides "That the states provided for in this Act shall not be entitled to any further or other grants of land for any purpose than is expressly provided in this Act And the lands granted by this section shall be held, appropriated and disposed of exclusively for the purposes herein mentioned, in such manner as the legislature of the respective states may severally provide." I think we have gone in this Section 9 of Proposition No. 28 exactly in accordance with the provisions of the Enabling Act. I withdraw my amendment, and I think if I had understood it rightly I never should have made it

Mr. Callaway of Madison: Mr President, I desire to offer a substitute for the amendment offered by the gentleman from Lewis & Clarke (Mr. **Toole**). I understand it is now in order. I move in Proposition No 35, Section 1, that all be stricken out after the word "laws" in the third line, and that that be adopted. I will read Section 1 as it would be if adopted. "All the public lands of the state are held in trust for all of the people, and none of such lands, nor any estate or interest therein shall ever be disposed of except in pursuance of general laws."

Mr. Luce of Gallatin I rise to a point of order We have already amended that section and adopted it

The President: The section has not been adopted The amendment offered by the gentleman from Lewis & Clarke (Mr Toole) will be in order first, because the amendment of the gentleman from Madison (Mr. Callaway) contemplates striking out a portion of the section, and the friends of the measure have a right to amend it as much as desired. The question is now upon the amendment offered by the gentleman from Lewis & Clarke

Mr. J K Toole of Lewis & Clarke: I think the gentleman from Gallatin misapprehended my amendment or the purpose of it. I stated at the time I introduced it that I very much preferred myself that the matter should be left to the Legislative Assembly, and it seems that under the grant itself as read by the gentleman from Gallatin that the matter belongs to the Legislative Assembly It is part of the grant of the general government that the lands are to be disposed of in the manner prescribed by the Legislative Assembly. So far as the amendment that I offered here is concerned, it is not in conflict with the portion of the section read as having been adopted, that in the sale of these lands preference should be given to actual settlers. I had prepared an amendment when the subject was up, to another portion of the constitution which provided that in the sale of these lands preference should be given to all parties who are in the actual occupancy of these lands, who are bona fide residents upon them prior to the fourth day of July, 1889. I was not present when this amendment was adopted, although the purpose and intention of it was that preference should be given to those persons who were occupants of the lands prior to the sale of it, prior to this time, as the constitution of 1884 had the same provision in it. People were then in possession of these lands by reason of a failure to know where the school lands were, and the adoption of that proposition in the constitution of 1884 was certainly an invitation or a declaration so far as the constitution could make it, that their rights should be respected; and in pursuance of that I know several instances where men went upon school lands believing that they would have the first right to purchase. The price should be fixed by somebody, but every man in possession of them should have the preference. However, as was said by Judge Knowles, it certainly cannot be intended that we are going to open up these lands and permit everybody to go upon them and cut the timber and exhaust the soil and destroy its value, and then put them up to sell and say that the rights of parties should be respected without loss or anything else. I simply say this in explanation, and I offered this simply that in the event the convention determined to interfere with the sale or disposition of this property, that the sale of the agricultural lands should be so regulated as to give the first preference to actual settlers on the lands, But I believe now and believed before that it ought to be left to the Legislative Assembly. It seems to me that we are compelled to leave it to the legislature under the grant, and with the consent of my second I withdraw the amendment.

The President: The gentleman withdraws the amendment. Hence there is nothing now before the convention except the motion of the gentleman from Madison to strike out, which the Clerk will read.

The Clerk read as follows: Strike out of Proposition No 35 after the word "laws" in the third line, so that the section will read as follows. Section 1. All the public lands of the state are held in trust for all the people, and none of such lands nor any estate or interest therein shall ever be disposed of except in pursuance of general laws.
The motion to amend was seconded.

The President: The Chair would suggest that the Clerk read the amendment offered by Mr. Luce of Gallatin yesterday that was adopted.

The Clerk read as follows: Mr. Luce of Gallatin offered an amendment to Section 1 of Proposition No. 35 which was adopted, eliminating the words "All of the public lands of the State are held in trust for all the people" and substituted the following: "All lands of the State that have been or may hereafter be granted to the State by Congress, and all lands acquired by gift or grant or devise from any person or corporation shall be public lands of the State, and shall forever be held in trust for the people for the respective purposes for which they have been or may be granted, donated or devised, and none of such lands or any estate or interest therein shall ever be disposed of except in pursuance of general laws."

Mr. Callaway of Madison: Then my motion is not in order, and I am satisfied with the proposition as it now stands.

The President: Are there any further amendments to the proposition?

Mr. Witter of Beaverhead: I move the adoption of the article as now amended.

Mr. Myers of Yellowstone: I have an amendment which I desire to offer.

The President: The gentleman from Yellowstone, Mr. Myers, offers an amendment to Section 2, line six of Proposition No. 34, which is now Proposition No. 35, to strike out "1895" and insert in lieu thereof "1915".

The motion was seconded.

The Chair stated the motion.

The Clerk read the section as proposed to be amended as follows: "The lands of the first of said classes may be sold or leased under such rules and regulations as may be prescribed by law. The lands of the second class may be sold or the timber thereon may be sold, under such rules and regulations as may be prescribed by law. The agricultural lands may be either sold or leased, under such rules and regulations as may be prescribed by law. The lands of the fourth shall be sold in alternate lots of not more than five acres each, and not more than one-half of any one tract of such lands shall be sold prior to the year 1915"

Mr. Myers of Yellowstone: If that amendment is adopted it will defer the sale of the alternate lots as provided for all the lands of the fourth class, or in other words the lands that are within the limits of the town, or within three miles thereof, as now provided, shall be subdivided into lots of not exceeding five acres each, and as contemplated by the gentleman from Missoula in his resolution to reserve those lands or not allow any of those lands of the fourth class, or these alternate blocks of five acres each to be sold until 1895. My idea is to hold them for about twenty-five years before they are sold, so that the State may have the benefit of the increase of value of those lands.

The Chair stated the question on the motion of the gentleman from Yellowstone, Mr. Myers, and a division being called for the same was declared lost by a vote of nineteen in the affirmative and twenty-one in the negative.

Mr. Conrad of Choteau: I move to amend by making it 1910.

The motion was seconded.

Mr. Conrad of Choteau: I hope that this will be inserted We have provided here for alternate lots to be sold, and if buildings are erected on those alternate lots it will make the others very valuable; and if we hold them until 1910 it will add materially to the school fund. If we go now to improve these lands, the year 1895 will be on us before any improvements are actually completed. The reserve lots—the first settled lots shall be sold now or as soon as the Legislature can get around to it, and then we hold the other lands until 1910.

The Clerk read the section as proposed to be amended by the amendment of the gentleman from Choteau (Mr. Conrad) to insert "1910" in place of "1895".

Mr. Burleigh of Custer: I can see one serious objection to this and only one. We will take for instance the case of the city of Missoula here that is growing and expanding. Now, if you extend the time, while it may enhance the school fund very materially, it may be a great obstacle in the way of building up the city. I make the suggestion as one that suggests itself to my mind.

Mr. Marshall of Missoula: I am satisfied that short leases, so far as the school lands are concerned, that valuable leases cannot be made, and if leased at all the buildings will necessarily be very indifferent, and the rents will always be small, and it does seem to me that for the sake of the improvement of the city if nothing else the section should be allowed to stand as it is. I believe that the school fund will not suffer by it. I believe in five or six years those lands will be as valuable as they will ever be, and the interest on the fund will always exceed the income from any leases that may be made for five years, with the small buildings that will necessarily be put upon them, for no lessee is going to put valuable improvements upon a lease for five years. I hope the time will not be extended as long as the gentleman suggests. It seemed to me when I drew up this proposition that 1895 would be long enough. It does seem to me that putting it off twenty-five or thirty-five years will not only be an injury to the city of Missoula, but as I believe actually a detriment to the school fund of the State of Montana.

Mr. Conrad of Choteau: I do not think that 1910 is too long to hold these alternate lots. That portion of the town that is now school land will be built up for residence property anyway and if a good residence was put on each alternate block of about four acres it will certainly enhance the other block, and we cannot expect that very many residences will be built before 1895, because this law will not go into effect until 1890. So I hope that the clause of 1910 will prevail. I think it will be to the interest of the school fund.

Mr. Callaway of Madison: It is perhaps well for this convention sometime to recur to facts of history. I beg of these gentlemen their indulgence while I state that if they ever recur to the history of Illinois they will remember that it had a magnificent heritage granted them by Congress for school purposes. By the jobbing of the Legislature, by land sharks getting in their work, the fact is that nearly the entire grant to the State of Illinois for school purposes was frittered and nothing left. Gentlemen here, some of them, have said that we are not the assembled wisdom of the world. That I know, and I do not presume, sir, that we are anything more than the average Legislature will be in point of allegiance or integrity. But we are not disposing of these lands. You will know how easy it is for some gentleman who has substantial interests to get a law passed that will benefit him, when nine-tenths of the Legislature do not know what he is doing Recall history. You heard a very eloquent and able speech yesterday from the gentleman from Nevada (Senator Stewart) speaking about the passage of a law demonetizing silver, and yet to this day the history of that legislation is not known; no man knows how it was done. I am in favor of the amendment of the gentleman from Choteau, for the reason that I believe the time should be deferred when this property shall be disposed of. As a little more of Illinois history, there happened somehow or other to be retained by the State one block in the city of Chicago for school purposes. That single block today is worth one million of dollars. They have hardly any school land left there now except that. The entire school lands were sold to jobbers and appropriated by speculators. So that I say that in this provision when every alternate lot as provided here is reserved, it will not retard the settlement of the progress of the city of Missoula or the city of Bozeman or the city of Miles, and I believe that if we do not do our duty here in reserving some of these lands until they can rise in value and increase our school fund and preserve it, we will regret it. The greatest interests of a civilized people is the education of the children of the land. Therefore, I do insist that the time shall be long deferred when the Legislature will be enabled in any way to dispose of all of this grand heritage donated us by Congress.

The Chair put the question on the motion of the gentleman from Choteau (Mr. Conrad) to insert "1910", and a division being called for the same was declared carried by a vote of twenty-eight in the affirmative to eight in the negative.

Mr. Schmidt of Silver Bow: I would like to know how Section 1 of Article 35 reads by this time?

The President: The whole proposition should be read before it is acted upon. For the information of the gentleman from Silver Bow Section 1 will now be read.

The Clerk read the section as amended for the information of the gentleman from Silver Bow.

Mr. Burleigh of Custer: I move the adoption of the section.

The motion was seconded.

The President: The Chair would like to make one suggestion as to the difficulty of defining the limits of a city of town that is not incorporated. Would it not give rise to some difficulty and confusion.

Mr. Burleigh of Custer: I understand that under the present law they should be defined and must be defined. I think that a three mile limit would define this matter, within and fully cover the point suggested by the Chair.

The President: It is moved and seconded that Section 1 as amended be now adopted. The question is now on the motion to adopt.

The Chair put the question on the motion to adopt Section 1 and a vote being taken the same was declared carried.

The President: Mr. Luce of Gallatin offers an amendment to Section 2 of Proposition No. 35 as it now stands, being Proposition No. 34 as printed.

The Clerk read as follows: Amend Section 2 of Proposition No. 34 as amended by striking out of line six the words "and not more than one-half of any one tract of such lands" and insert "and only the alternate odd numbered lots."

The motion was seconded.

The Chair stated the motion.

Mr. Kanouse of Meagher: I move to amend the amendment by inserting after the word "laws" the words "unless occupied by actual settlers."

Mr. Hogan of Silver Bow: I hope this will not carry. I do not see that it makes any difference whether the odd numbered or the even numbered lots should be sold. They are amending this proposition setion by section and word by word. We will have to refer it back to the committee that it came from, just the same as the judiciary report.

Mr. Luce of Gallatin: I accept the amendment of the gentleman from Meagher.

The President: The question now is upon the amendment of the gentleman from Gallatin as further amended and accepted by adding thereto "and unless occupied by actual settlers."

Mr. Wittter of Beaverhead: I would like to ask the gentleman a question—whether he intends to settle every fourth lot or every other lot.

Mr. Luce of Gallatin: Well, every odd numbered lot—every alternate odd numbered lot. The first lot to be numbered "one", the next alternate lot to be numbered "three", and then sell every second lot. That is the language that has been used in all these grants to railroad corporations and everything else—every alternate odd numbered lot. Let me get before this convention what I mean (Reading) "The lands of the fourth class shall be sold in lots of not more than five acres and not more than one-half on any such lands shall be sold prior to" etc. Instead of selling the alternate lots you sell the half of an alternate lot.

Mr. Burleigh of Custer: If the gentleman will allow me to make a suggestion: the language used is "every alternate lot and designated by numbers."

Mr. Luce of Gallatin: Well, "every alternate lot designated by odd numbers." So that you sell the half of a five acre lot, and then that which remains unsold gets the benefit of the increased value.

Mr. Marshall of Missoula: Mr. President, suppose we put "one-half of any one section." "The one-half of the tract" was not intended to refer to the five acre tracts, but to the school tracts.

The President: The question is upon the adoption of the amendment.

Mr. Kanouse of Meagher: I move, sir, to substitute for the language used, without changing the idea, as has been suggested by the gentleman, the following: "No more than one-half of each alternate lot not exceeding five acres in extent shall be sold" etc.

Mr. Mayger of Lewis & Clarke: I would like to make a motion to refer the proposition with the various amendments to the Printing Committee and have it printed.

The motion was seconded.

The President: The gentleman's motion to refer of course takes precedence to all motions to amend, but would it not be well to consider this amendment first and get the matter straightened out?

Mr. Mayger of Lewis & Clarke: There are members here who do not know how it does read.

The President: The gentleman from Meagher offers an amendment to the amendment offered by the gentleman from Gallatin which will now be read.

The Clerk read as follows: Beginning after the word "each" strike out "and not more than one-half of any such lands" and substitute the following: "No more than one-half of each alternate lot, and not exceeding five acres in extent, shall be sold prior to the year 1910."

Mr. Ramsdell of Missoula: It seems to me that there is one vital error in that, that is going to creep in after years It may be absolutely necessary for the prosperity of some growing town that this land be sold or leased under such conditions that they may build and move on with the prosperity of the town, and if this provision is in there it will be impossible to settle only on these alternate sections of land, and thereby retard the growth and development of the cities and towns that may be able to build on these lands. It occurs to me that this will be a serious mistake—that although it is a laudable ambition to keep this fund and allow the value to enhance to the benefit of the school fund, yet at the same time we should not lose consideration of the fact that it is going to hurt the interests of these towns

Mr. Hickman of Madison: I see another matter in this amendment of the gentleman from Meagher, and that is the closing clause where it provides for actual setttlers. Now, before the contingency may arise, if this constitution is adopted and before the Legislature could reasonably be expected to adopt laws regulating the sale of this land, the whole of that section might be squatted on by squatters, and they would take advantage of this provision here I think the whole matter ought to go to some committee to be straightened out.

Mr. Conrad of Choteau: I hope that this amendment will not prevail for the same reason that the gentleman from Madison has stated. If it does you will find that men will put up ten-acre shacks upon the property and will claim the right to purchase it As to the phraseology, I do not object to that part of it.

Mr. Callaway of Madison. I think the point raised by the gentleman from Madison is very well taken I made that same suggestion to the gentleman who introduced the proposition a few moments ago. There is no question but such a thing as that will occur, and our action here will be futile.

Mr Maginnis of Lewis & Clarke I quite agree with the gentleman from Madison There would be ample time while the constitution was being adopted to oppose these lands It ought to be cut right down to the very day that it was discussed in the convention

The Chair put the question on the adoption of the amendment offered by the gentleman from Meagher, and the same was declared lost.

The President. The question now recurs upon the amendment offered by the gentleman from Gallatin (Mr. Luce).

The Chair put the question on the said amendment, and the same was declared lost

Mr. Mayger of Lewis & Clarke: I would urge my motion now to refer this matter to the committee on printing

Mr. Hickman of Madison I move as an amendment that this whole subject mattter be referred to the committee on education.

Mr. Marshall of Missoula: I move that the section as amended be adopted.

The President. The motion to refer is in order. The question is upon the adoption of the section, and it has been moved to refer to the Committee on revision and phraseology.

Mr. Schmidt: I would amend that by moving that we consider Section 4, and then I would amend the amendment to refer the proposition to the committee on revision and phraseology with instructions to clothe the ideas adopted in other and plainer language, have it printed and report to the convention

Mr Mayger of Lewis & Clarke: My idea of referring this to the committee on printing was to have this matter printed and referred to the members After it is adopted it wont make any difference. I want to get to see this matter before it is adopted

The President The gentleman from Silver Bow asks for a consideration of Section 4 before that is done

Mr. Myers of Yellowstone: I move that Section 4 be adopted and renumbered 3.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried

The President: Now, the question before the convention is upon the reference of the proposition as amended to the Committee on Revision and Phraseology, with instructions to revise it and order it printed for the consideration of the convention.

Mr. Hogan of Silver Bow: I would call for the reading of Proposition No. 35 as amended, so that the members can tell whether it suits them or not.

The President: If there be no objection it will be read.

The Clerk read Proposition No. 35.

The President: There is a motion to refer this to the Printing Committee.

Mr. Luce of Gallatin: I think the convention has spent time enough on this proposition, and I think from the reading of it by the Clerk that it must be apparent to everyone. I think we are well able to dispose of it now. I cannot understand why it is necessary to delay this matter any longer. I understand that the people outside are anxious to see this constitution, and I certainly don't blame them.

Mr. Mayger of Lewis & Clarke: I will withdraw my motion.

The President: The question is on the adoption of the proposition as amended. The ayes and nays will be entered on the journal.

The Clerk called the roll. The vote stood as follows:

Ayes: Breen, Browne, Buford, Burleigh, Burns, A. F.; Burns, A. J.; Callaway, Cardwell, Carpenter, Chessman, Conrad, Cooper, Courtney, Dyer, Eaton, Fields, Gaylord, Gillette, Goddard, Hammond, Hatch, Hershfield, Hickman, Hobson, Hogan, Joyes, Kennedy, Knowles, Loud, Luce, Maginnis, Marshall, Mayger, McAdow, Muth, Myers, Parberry, Schmidt, Watson, Winston, Mr. President—41.

Nays: Aiken, Kanouse, Mitchell, Ramsdell, Toole, J. K; Whitehill—6.

Absent: Bickford, Brazleton, Bullard, Burns, Ed; Cauby, Collins, Craven, Dixon, Durfee, Gibson, Graves, Hartman, Haskell, Joy, Knippenberg, Kohrs, Marrion, Middleton, Reek, Robinson, Rickards, Sargent, Stapleton, Toole, J. R.; Warren, Webster, Witter—27.

The Chair announced the vote and declared the proposition adopted.

Mr. Burleigh of Custer: I desire to ask the convention to excuse me until Tuesday afternoon. I have some very important business in the lower country and would like to go down and attend to it.

The President: If there be no objection, the gentleman will be excused.

Mr. Marshall of Missoula: I move that when the convention adjourn it adjourn until four o'clock on Monday.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

The President: The Chair desires to make a statement. This Proposition 35 has been adopted as part of the constitution and will be referred to the Engrossing and Enrolling Committee and subsequently to the Committee on Revision and Phraseology.

Mr. Hickman of Madison: I have a resolution which I wish to introduce and have referred to the Judiciary Committee.

The President: The resolution will be read by the Clerk.

The Clerk read as follows: Resolved, that W. H. Green, Assistant Sergeant-at-Arms, and Henry Bernard, Clerk of the Committee on Finance and Acting Clerk for the Committee on Miscellaneous Subjects, together with the stenographer and such other officers as are not provided for, be included among the attaches provided for in Resolution No. 31.

The President: If there be no objection this will be received and referred to the Committee on Judiciary.

Mr. Buford of Madison: I move that the convention now take a recess until two o'clock.

Mr. Maginnis of Lewis & Clarke: I move we adjourn.

The motion was seconded.

The Chair put the question on the said motion to adjourn, and the same was declared carried.

The convention adjourned until Monday, August 12th, 1889, at 4 P. M.

THIRTY-SECOND DAY.

Monday, August 12th, 1889. 4 P. M.

The convention was called to order by the President.

The Clerk called the roll.

The President: The Chair has a letter from Mr. Edward Burns asking to be excused until Wednesday. If there be no objection he will be excused.

The Chaplain offered prayer.

The Clerk read the journal of the previous day.

Mr. Knowles of Silver Bow: My colleague, Mr. Rickards, has been so unfortunate as to be afflicted by the death of one of his children who died yesterday afternoon. I desire to have him excused until tomorrow.

The President: If there be no objection, Mr. Rickards, having lost one of his children by death, will be excused until tomorrow.

Mr. Witter of Beaverhead. I would ask that Mr. Knippenberg of Beaverhead County be excused.

The President: Mr. Knippenberg will be excused until tomorrow if there be no objection.

Mr. Middleton of Custer: The Committee on Engrossment and Enrollment desire to make the following report.

The President: The Clerk will read the report of the Committee on Engrossment and Enrollment.

The Clerk read as follows: Mr. President: Your Committee on Engrossment and Enrollment, to whom was referred Propositions No. 24, 27 and 35, for the purpose of enrollment, beg leave to report that the enrolled copies have been carefully compared with the originals and that said propositions are correctly enrolled.

(Signed) MIDDLETON, Chairman.

The President: If there be no objection, the report will be received and adopted.

The Clerk also read the following report of the Committee on Rights of Suffrage and Qualifications to Hold Office, which was sent to the Clerk's desk

Mr President: Your Committee on Rights of Suffrage and Qualifications to Hold Office, to whom was referred Proposition No. 29 on Woman Suffrage, offered by Callaway, together with a communication and two petitions relating to the same subject, beg leave to report that they have had the same under consideration and report them back without recommendation.

(Signed) ROTWITT, Chairman.

The Clerk read Proposition 29.

Mr. Kennedy of Missoula: I move you that the report be laid upon the table.

The motion was seconded

Mr. Luce of Gallatin called for the ayes and nays.

The President: If there be no objection, the ayes and nays will be entered on the journal.

The Clerk called the roll. The vote stood as follows·

Ayes: Cardwell, Carpenter, Courtney, Craven, Dixon, Durfee, Dyer, Eaton, Gibson, Graves, Hammond, Hartman, Hershfield, Hogan, Joyes, Kennedy, Kohrs, Luce, Maginnis, Marrion, Marshall, Mayger, Middleton, Mitchell, Reek, Robinson, Rotwitt, Schmidt, Stapleton, Toole, Jos. K.; Whitehill, Winston, Witter—33.

Nays: Aiken, Bickford, Brazleton, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. F., Burns, A. J., Callaway, Cauby, Chessman, Collins, Conrad, Cooper, Fields, Gibson, Gillette, Goddard, Hatch, Hickman, Hobson, Kanouse, Knowles, Loud, McAdow, Muth, Myers, Parberry, Ramsdell, Sargent, Toole, J. R.; Warren, Watson, Mr. President—35.

Absent: Burns, E.; Gaylord, Haskell, Joy, Knippenberg, Rickards, Webster—7.

The Chair announced the vote and declared the motion to lay on the table lost.

Mr. Warren of Silver Bow: I move that the report of the committee be received and that the resolution or proposition be adopted

The motion was seconded.

Mr. Callaway of Madison: I move to amend the motion of the gentleman from Silver Bow that the proposition as presented be adopted as a separate proposition in the constitution.

The motion was seconded.

The President: The Chair is of the opinion that without the suspension of the rules the proposition would have to be considered in the Committee of the Whole before it can be adopted as a part of the constitution

Mr. Burleigh of Custer: For the sake of expediting the thing, I move that the rules be suspended.

The motion was seconded.

The President: It is moved and seconded that the rules of the convention be suspended, that the report of the Committtee on Suffrage be received and the resolution reported back to be adopted and made a separate proposition in the constitution.

Mr. Marrion of Missoula called for the ayes and nays.

The President: If there be no objection, the ayes and nays will be entered on the journal.

The Clerk called the roll. The vote stood as follows:

Ayes: Aiken, Bickford, Breen, Browne, Bullard, Burleigh, Burns, A. F.; Burns, A. J.; Callaway, Cauby, Chessman, Collins, Conrad, Cooper, Fields, Gillette, Goddard, Hatch, Hickman, Hobson, Kanouse, Knowles, Loud, McAdow, Muth, Myers. Parberry, Sargent, Toole, Jos. K., Toole, J. R.; Warren, Watson, Mr. President—34.

Nays: Brazleton, Cardwell, Carpenter, Courtney, Craven, Dixon, Durfee, Dyer, Eaton, Gibson, Graves, Hammond, Hartman, Hershfield, Hogan, Joy, Joyes, Kennedy, Kohrs, Luce, Maginnis, Marrion, Marshall, Mayger, Middleton, Mitchell, Ramsdell, Reek, Robinson, Rotwitt, Schmidt, Stapleton Whitehill, Winston, Witter—34.

Absent: Burns, E.; Gaylord, Haskell, Joy, Knippenberg, Rickards and Webster.

The Chair announced that the motion, having failed to receive a two-thirds majority, was lost.

Mr. Bickford of Missoula: I move you, sir, that the proposition be referred to General Orders for consideration.

The motion was seconded.

Mr. Maginnis of Lewis & Clarke: I move that the resolution be indefinitely postponed.

The President: The motions are not in order because the matter has been disposed of. Are there any other reports of standing committees?

Mr. Breen of Jefferson sent up the following, which was read by the Clerk: "Every citizen of the State shall be free to obtain employment wherever possible, and any person, corporation or agent thereof keeping a blacklist, interfering or hindering in any way a citizen from obtaining or enjoying employment already obtained from the same or any other corporation or person, shall be deemed guilty of a conspiracy against the welfare of the State, which offense shall be deemed felony."

The President: If there be no objection, this will be received, and unless otherwise directed, referred to the Committee on Labor.

Mr. Warren of Silver Bow: Some time during last week I submitted a memorial here. There was a special committee appointed on that, and I would like to know when they expect to report.

The President: Will Governor Carpenter, who is Chairman of that committee, be kind enough to inform the gentleman from Silver Bow when the committee will be able to report?

Mr. Carpenter of Lewis & Clarke: The committee will be able to report in a day or two. They have been unable to make any report as yet.

The President: If there be no objection, further time will be granted the committee. The unfinished business before the convention relates to State Institutions and Public Buildings.

Mr. J. K. Toole of Lewis & Clarke: I desire to inquire the present status of the business.

The President: The Chair is of the opinion it would be better for the Clerk to read the minutes to ascertain precisely the condition of that proposition.

The Clerk read the minutes.

Mr. Luce of Gallatin: I would like to inquire if Mr. Warren's amendment is before the convention now.

The President The Clerk informs the Chair that nothing has been done with it. Everything else has been disposed of except the substitute offered

Mr J. R Toole of Deer Lodge: I desire to make a motion that the consideration of that substitute for Section 2 be indefinitely postponed.

Mr. Luce of Gallatin· I would like to offer an amendment to the substitute offered by the gentleman from Meagher County.

The President. The Chair desires to state to the gentleman from Deer Lodge that a motion to indefinitely postpone an amendment is not in order. It could apply to the main question but not to the amendment.

Mr. Collins of Cascade· My recollection is that the motion of the gentleman from Lewis & Clarke County to substitute "White Sulphur Springs" was the last motion

Mr. Luce of Gallatin: His motion was to strike out something that did not exist It was ruled out of order. If I understand the proposition before the convention now, the amendment offered by the gentleman from Silver Bow has been withdrawn, and nothing remains before the convention but the substitute offered by the gentleman from Meagher County.

The President That is the position of it, and you offer the substitute now?

Mr. Luce of Gallatin. Yes sir.

Mr. Reek of Deer Lodge. I wish to offer an amendment to substitute for Section 2.

The President: The Chair desires to state that the question now before the convention is the substitute offered by the gentleman from Meagher, Mr Kanouse. The substitute will be read.

The Clerk read as follows· Substitute for Section 2. After the admission of the State into the Union and at the general election in the year 1892, the question of permanent location of the seat of government is hereby provided to be submitted to the qualified electors of the State and a majority of all the votes upon said question shall determine the election thereof In case there shall be no choice of location at said election the question of choice between the two places for which the highest number of votes shall have been cast shall be and is hereby submitted to the qualified electors at the next general election thereof.

The President· The Clerk will now read the amendment offered by the gentleman from Gallatin, Mr Luce.

The Clerk read as follows. Amend by adding the following: Provided that until the seat of government shall have been permanently located the temporary seat of government shall be and remain at the city of Helena.

The President It is moved and seconded that the amendment be adopted. The question now before the convention is upon the adoption of the amendment offered by the gentleman from Gallatin.

Mr. Luce of Gallatin called for the ayes and nays.

The President The ayes and nays will be entered on the journal, if there be no objection

The Clerk called the roll. The vote stood as follows:

Ayes: Breen, Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Craven, Eaton, Fields, Gibson. Gillette, Goddard, Graves, Hammond, Hershfield, Hobson, Joyes, Kanouse, Loud, Maginnis, Mayger, McAdow, Middleton, Muth, Myers, Parberry, Rotwitt, Toole, Witter—37.

Nays: Aiken, Bickford, Brazleton, Callaway, Courtney, Dixon, Durfee, Hartman, Hatch, Hogan, Kennedy, Knowles, Kohrs, Luce, Marrion, Marshall, Mitchell, Ramsdell, Reek, Robinson, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Mr. President—28.

Absent· Burns, E, Gaylord, Joy, Webster—4.

Paired Dyer and Knippenberg, Haskell and Watson, Hickman and Rickards—6

The Chair announced the vote and declared the amendment carried.

Mr Maginnis of Lewis & Clarke: I move the adoption of the substitute.

Mr Warren of Silver Bow: I have an amendment

Mr Collins of Cascade· I move that the vote by which the last motion was carried be reconsidered.

Mr. Maginnis And I move to lay that motion on the table.

The President: It is moved and seconded that the vote by which the last motion was carried shall be reconsidered, and the gentleman from Lewis & Clarke moves to lay that motion on the table.

Mr. Warren of Silver Bow: I have an amendment.

The President: The motion to reconsider takes precedence of everything else except a motion to adjourn. The question now is upon the motion to reconsider the vote by which Helena was placed in the substitute and to lay upon the table.

Mr. Marshall of Missoula called for the ayes and nays.

The President: The ayes and nays will be entered in the journal. The question is upon the motion to lay upon the table the motion to reconsider the vote by which Helena was adopted.

The Clerk called the roll. The vote stood as follows:

Ayes: Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J.; Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Craven, Eaton, Gibson, Gillette, Goddard, Graves, Hammond, Hershfield, Hobson, Joyes, Kanouse, Loud, Maginnis, Mayger, McAdow, Middleton, Mitchell, Muth, Myers, Parberry, Rotwitt, Toole, J. K.; Witter—36.

Nays: Aiken, Bickford, Brazleton, Breen, Callaway, Courtney, Dixon, Durfee, Fields, Hartman, Hatch, Hogan, Kennedy, Knowles, Kohrs, Luce, Marrion, Marshall, Ramsdell, Reek, Robinson, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Mr. President—29.

Absent: Burns, E.; Gaylord, Joy, Webster—4.

Paired: Dyer & Knippenberg, Haskell & Watson, Hickman & Rickards—6.

The Chair announced the vote and declared the motion carried.

Mr. Maginnis of Lewis & Clarke: I move the adoption of the substitute.

Mr. J. K. Toole of Lewis & Clarke: I move the previous question upon Section 2 and the substitute.

The President: The question before the convention is upon the adoption of the substitute and the section. Upon this the previous question has been demanded. The question before the convention is, shall the main question be now put? The previous question will apply to the amendment first, and then to the section.

The Chair put the previous question, and the same was declared carried.

The President: The question now is upon the adoption of the substitute offered by the gentleman from Meagher, Mr. Kanouse, as amended by the proviso, providing that until the permanent seat of government shall be located the temporary seat of government shall remain at Helena. The question is upon the adoption of that substitute as amended. The ayes and nays are demanded. The Clerk will call the roll.

The vote stood as follows:

Ayes: Breen, Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J.; Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Craven, Eaton, Fields, Gibson, Gillette, Goddard, Graves, Hammond, Hershfield; Hobson, Joyes, Kanouse, Loud, Maginnis, Mayger, McAdow, Middleton, Mitchell, Muth, Myers, Parberry, Rotwitt, Toole, J. K.; Witter—39.

Nays: Aiken, Bickford, Brazleton, Courtney, Dixon, Durfee, Hartman, Hatch, Hogan, Kennedy, Knowles, Kohrs, Luce, Marrion, Marshall, Ramsdell, Reek, Robinson, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Mr. President—26.

Absent: Burns, E.; Gaylord, Joy and Webster—4.

Paired: Dyer and Knippenberg, Haskell and Watson, Hickman and Rickards—6.

The Chair announced the vote and declared the substitute offered by the gentleman from Meagher to Section 2 of Proposition No. 18, as amended, carried.

Mr. J. K. Toole of Lewis & Clarke: I move to reconsider the vote by which that substitute was adopted, and to lay that motion on the table.

The motion was seconded.

The President: It has been moved and seconded that the vote by which the substitute was adopted be reconsidered. There is also a motion to lay that motion to reconsider upon the table. The question is upon the motion to reconsider.

Mr. Hogan of Silver Bow called for the ayes and nays.

The Clerk called the roll. The vote stood as follows:

Ayes: Breen. Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J.; Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Craven, Eaton, Fields, Gibson, Gillette, Goddard, Graves, Hammond, Hershfield, Hobson, Joyes, Kanouse, Loud, Maginnis, Mayger, McAdow, Middleton, Mitchell, Muth, Myers, Parberry, Rotwitt, Toole, J. K.; Witter—39.

Nays: Aiken, Bickford, Brazleton, Courtney, Dixon, Durfee, Hartman, Hatch, Hogan, Kennedy, Knowles, Kohrs, Luce, Marrion, Marshall, Ramsdell, Reek, Robinson, Sargent, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston, Mr. President—26.

Absent. Burns, E.; Gaylord. Joy and Webster—4.

Paired: Dyer and Knippenberg, Haskell and Watson, Hickman and Rickards—6.

The Chair announced the vote and declared the motion carried.

Mr. Witter of Beaverhead sent up an amendment, which the Clerk read as follows: "Add to Proposition No 18, Section 6: It shall be the duty of the Legislative Assembly to make provision as soon as practicable for a State University, School of Mines, State Normal School, Agricultural College, State Reform School, Dead and Dumb Asylüm, Insane Asylum and State Penitentiary. Provided that no more than two of such institutions shall be located in any one conuty in the State, and none of them in the county in which the capital of the State is located."

Mr. Maginnis of Lewis & Clarke: It will be necessary to have two penitentiaries, an eastern penitentiary and a western penitentiary. I move the substitute "two" for "one".

Mr. Witter of Beaverhead: I accept the amendment.

Mr. Muth of Lewis & Clarke: I move the adoption of the amendment.

The motion was seconded.

Mr. Collins of Cascade: With the arguments that we have heard here the last week about legislation, I do not see the necessity of adopting this at all. The Legislature has the power, and will certainly exert that power as soon as possible, to govern this matter. So it seems to me that is no reasonable cause why this should go into the proposition. It does not add one iota to or take one iota from the power of the Legislature. If we adopt this section it don't add to or take from any of the authority or powers of the Legislative Assembly. It is not necessary because the Legislative Assembly will have that power without it, except it may be possible that the Legislature might put two educational institutions in one place and this would prohibit it I do not care where the University or the educational institution may be located. The question comes before the convention, Is not it right and proper that two or more of those institutions may be located where the University is located, whether it be at Bozeman, Missoula, or elsewhere. It seems to me the best thing to do is to leave this matter entirely with the Legislature.

Mr. Reek of Deer Lodge: I hope this motion will not prevail, for the simple reason that if it does no two of these State institutions can be located in one town. I think it would be very necessary to locate several of these institutions in the same place, especially these educational institutions. I think the State University, the School of Mines and the Agricultural College should be all located in the same town and should be subject to and under the control of the same management. I think it would be an advantage to the school.

Mr. Witter of Beaverhead: I offer this for the purpose of distributing these institutions throughout the State. That is the object of the section, and I have no argument to make upon it. It is to the interest of the State that they should be distributed It is to the interest of any town that they should all be in any one town. and that is as the matter would stand. If you get them all in one location it would be good for that particular location; it would be of no advantage at all to the State to have them all in one place.

Mr. Aiken of Silver Bow: I have an amendment to Mr. Witter's amendment.

Mr. Middleton of Custer: I would like to call again for the reading of the section. I did not understand whether it embraced part of the public institutions provided for by the Enabling Act.

The Clerk read the amendment.

Mr Witter of Beaverhead: The amendment that the gentleman from Lewis & Clarke offered was two penitentiaries instead of one. It did not apply to any of the other State institutions.

The President: There is an amendment here now from the gentleman from Silver Bow that is in order.

Mr. Witter of Beaverhead: I would like to have that amendment rectified, else I cannot accept it. It reads now that not more than two shall be established in any one county, and the gentleman from Lewis & Clarke had reference only to there being two penitentiaries in the State.

Mr. Muth of Lewis & Clarke: The gentleman from Beaverhead is entirely in accord with the intention of the amendment offered by the gentleman from Lewis & Clarke. The mistake was made by the Clerk. The gentleman from Lewis & Clarke moved to make it two penitentiaries. The Clerk instead of making it that way has left it to read "one penitentiary" and has changed the word "two" in reference to the building or buildings to be placed in any one county.

The President: The Chair understands then that it is two penitentiaries, and not more than one of these buildings shall be placed in any one county.

Mr. Luce of Gallatin: I desire to ask if an amendment is in order

The President: Not at present. The Clerk will now read the amendment offered by the gentleman from Beaverhead, as amended and accepted.

The Clerk read as follows: Add to Proposition No. 18, Section 6: It shall be the duty of the Legislative Assembly to make provision as soon as practicable for a State University, School of Mines, State Normal School, Agricultural College, State Reform School, Deaf and Dumb Asylum, Insane Asylum and two State Penitentiaries. Provided that not more than one of such institutions shall be located in any one county of the State, and none of them in the county in which the capital of the State is located"

Mr. Warren of Silver Bow sent up an amendment, which the Clerk read as follows: "Provided, that nothing herein shall prevent counties now having such buildings from having any of said institutions."

The amendment was seconded.

Mr. Warren of Silver Bow: I make the statement for this reason: In Deer Lodge county the contract for the keeping of the insane is being performed, but it is not a State Institution. Therefore I am satisfied that the people of Deer Lodge county would like very well to get rid of the Penitentiary and the Insane Asylum both, and I think it nothing more than right that they should have an opportunity of competing for these public buildings.

Mr. Goddard of Yellowstone: I see no particular need of the amendment offered by the gentleman from Silver Bow County, inasmuch as if this section is adopted as amended the legislature will have a right to locate these institutions wherever it may see fit, and it would just simply be superfluous and would not be binding.

The Chair put the question on the motion of the gentleman from Silver Bow on the adoption of the amendment to the amendment, and the same was declared lost.

Mr. Luce of Gallatin sent up an amendment.

The President: The gentleman from Gallatin desires to amend the section offered by the gentleman from Beaverhead (Mr. Witter), as follows: Add the following to Section 6: Provided, that no State Institution shall be located until the capitol of the state shall have been permanently located.

The amendment was seconded.

The Chair put the question on the said amendment, and the same was declared carried.

Mr. Middleton of Custer: I would suggest that the Enabling Act, Section 17, provides for Agricultural Colleges and Normal Schools, and makes an appropriation of lands for those in the plural, and as the section reads it is in the singular. I move that Agricultural Colleges and Normal Schools be made in the plural.

The President: The question is now upon the adoption of the section as amended.

Mr. Reek of Deer Lodge: I move you that we strike out the first proviso in the section.

The Clerk read Witter's amendment.

Mr. Maginnis of Lewis and Clarke: I would ask if "colleges" and "normal schools" is not plural?

Mr. Witter of Beaverhead: They are in the singular, but I will accept an amendment to that effect.

The President: It will be so corrected. The gentleman from Deer Lodge moves to strike out the proviso, which reads as follows: "Provided that not more than one of such institutions shall be located in any one county in the state, and none of them in the county in which the capital of the state is located."

Mr Reek of Deer Lodge· Strike out the word "proviso" and the last word "state."

The President· The gentleman will please send up the amendment.

Mr Hartman of Gallatin: I move to strike out the entire substitute and attach to Section 1 the proviso that not more than one institution shall be located in any one county of the state That will cover the entire ground that the gentlemen are desiring to get at

The President. If the gentleman will write out his substitute the Chair will entertain it.

Mr. Hickman of Madison sent up an amendment.

The President· The Chair will hold the amendment of the gentleman from Madison. It is not in order at present. The gentleman from Deer Lodge (Mr. Reek) moves to amend Section 6 by striking out the first proviso up to and including the word "state." There is an amendment offered to this by the gentleman from Gallatin which the Chair is holding over at present.

Mr. Bickford of Missoula I hope that the amendment offered by the gentleman from Deer Lodge will not prevail It is certainly—(Interrupted).

The President: There is another amendment pending. After that is disposed of the gentleman will have the floor. The Chair would suggest to the gentleman from Deer Lodge that if his amendment should prevail it would leave the amendment offered by the gentleman from Gallatin standing alone without any coherence, and hence the amendment would not be appropriate without cutting out a portion that has already been adopted

Mr. Warren of Silver Bow: If a few remarks are in order I would like to make them.

The President The Chair will hear the gentleman in a few minutes. The Chair is waiting on an amendment which is being prepared.

Mr Warren of Silver Bow: It strikes me that this Section 6, as presented by the gentleman from Beaverhead—(Interrupted).

The President· The Chair desires to say to the gentleman that the gentleman from Missoula is entitled to the floor.

Mr. Bickford of Missoula: I desire to have all the amendments before the convention before I make my remarks to the Chair, and if the gentleman wishes to proceed he may

Mr. Warren of Silver Bow· This section 6 as presented by the gentleman from Beaverhead will have the effect. It will have the effect, in my judgment, of keeping every town in Deer Lodge County from being a candidate or receiving votes for the capital, and in the event that the city of Anaconda or the City of Deer Lodge should be chosen for the capital of the territory, in my judgment that would prevent them from taking the capital

The President· The Chair would suggest that there has been a substitute offered which the Clerk will read.

The Clerk read as follows· Strike out Section 6 and add to Section 1 the words· "Provided that not more than one of such institutions shall be located in any one county, and provided that none of such institutions shall be located in the county in which the capital shall be located, and none of such institutions shall be located until the permanent seat of government is fixed

The amendment was seconded.

Mr. Bickford of Missoula. I think the objection raised by the gentleman from Silver Bow is met by the last amendment, and if the amendment last offered is adopted, certainly there can be no plea made such as is advanced by him, that it would be impossible to locate the capital in the county of Deer Lodge. While the penitentiary is at present located in the county of Deer Lodge, it certainly remains a fact that under the provisions of this constitution the legislature will have the right to locate the penitentiary in any county in which it sees fit to locate it. It is not at the present time a *state institution, but rather an institution* under the guidance and direction, supervision and control of the United States. It will be a state institution, of course, upon the adoption of this constitution. It may become a state institution, but not one which has been located by legislative authority. It is simply one which has been located by the authority of the Congress of the United States. This is a matter of great importance. It is a matter of great importance to the people of this territory because Congress has bestowed upon the respective institutions mentioned in the proviso a large amount of the public domain. If the gentleman will refer to Section 17—the latter part of Section 17 of the Omnibus Bill, it is there stated that there is donated to the State of Montana for the establishment and maintenance of a school of mines 100,000 acres; for State Normal Schools, 100,000 acres; for Agricultural Colleges, 50,000 acres; for the establishment of a State Reform School, 50,000 acres; for the establishment of a Deaf and Dumb Asylum, 50,000 acres; and for other public buildings, 150,000 acres. It will be seen that there is a donation made not only for these schools and these public institutions, but there is also a donation for erecting the state buildings and the capitol. It seems to me that it would only be fair that there should be a distribution of this patronage to the different counties of the territory: that if one county receives the benefit of the capital and this donation of the lands, that another county will receive the benefit of another institution, perhaps one of learning—perhaps an agricultural college. By so doing you place in the reach of the people living in the different sections of the country one or the other of the state institutions, either the State Normal School, the State University, the School of Mines, or some other state institution. You place such an institution within the reach of all, and it seems reasonable that they should be distributed to the different parts of the state. It seems also that the different parts of the new state should receive the benefit of these donations. It is through the beneficence of Congress that we receive them. They are not made for any one particular county of the territory; they are not made for any one particular locality, but they are made for the benefit of the entire territory; and the legislators who meet here hereafter can place these institutions where they will be for the best advantage of the people. It seems also that there should be a restriction placed upon the placing of more than one of these institutions in any one county. It is a reasonable supposition that the different counties in the territory will be candidates for the location of these institutions; it is reasonable to suppose that they will want some of the institutions located in different parts of the territory in order that they may be, above all things else, acceptable to the young people who will attend these schools. If we can, then, by passing the amendment or the proviso last offered fix it so that the legislature will be compelled to distribute these institutions to the different parts of the state, it seems to me that we should do it. It seems reasonable that such a provision should be placed in our constitution.

Mr. Knowles of Silver Bow: The donations of land here are for capitol purposes and for institutions of learning, and yet the gentleman who has drawn up this bill has put in penitentiaries, so as to entirely exclude one of the counties of this territory from any of the benefits or for being a candidate for any of the benefits of this appropriation of public lands. I will say, if that is adopted, in relation to that county, that you cannot be a candidate for the benefits of any of these appropriations of public lands whatever. That is my understanding of that as it is. Gentlemen may say that the penitentiary at Deer Lodge is not a public institution, but it will be upon the adoption of this constitution, and this constitution will relate to matters as they are at the time of the adoption of the constitution. I a satisfied that will be a state institution at that time. It will be turend over to the state and then that will preclude and shut out that one county from any of the benefits of the land. All the amendments leave in there that question of the penitentiary, and leaving in that question of the penitentiary, you have by this convention said, as to this appropriation of public lands, we will exclude in this constitution one of the counties of the territory. If the gentlemen here think they can afford to do that let them go on.

Mr. Bickford of Missoula: Is it not a fact that the proviso as read says "Any institution hereafter to be located"?

Mr. Knowles of Silver Bow: Yes, but you have already in that bill, as it is introduced, shut out the provisions of the original bill.

Mr. Bickford of Missoula: If I thought for one moment that it would prevent the county of Deer Lodge, or any other county of the territory.

from receiving its proportion of the public lands appropriated, I should certainly vote against it.

Mr. Knowles of Silver Bow: I say that in that original bill as presented here there is this question, so that it shuts out Deer Lodge, and the amendment of the gentleman does not cure that at all. It does not affect that matter in any way, shape, form or manner. There is something as to the general bill that I would like to say, and that is that I believe it will be ten years before this capitol is located, and we will want normal schools in this territory before that time, and I am opposed to putting this thing all off until this capitol question is finally settled. I think we had better have no provisos to put in there looking to a future contest in relation to this matter. If you will just put in there a clause stating that none of these institutions that are specified shall be placed in more than one county or in the county where the capitol is established, it would cover the same idea that the gentleman wishes to get at, except penitentiaries. You put in penitentiaries there in such a way as to exclude the county of Deer Lodge.

Mr. Hartman of Gallatin called for the reading of the substitute.

The Clerk read the same

Mr. Whitehill of Deer Lodge: I move that the substitute and all the amendments thereto be stricken out.

The motion was seconded.

The President: The motion is not in order.

Mr. Burleigh of Custer: I fully endorse what has been said by my friend from Silver Bow county. I think that every tub should stand on its own bottom in this particular, and I do not believe in making the establishment of a normal school or any other institution contingent upon a fight that may be gotten up here, and while I believe it is right that each county that merits it should have one of these institutions, and I am willing to give it the benefit of it. yet to say that no one of these institutions shall be located until after the capitol is located is a sentiment that I am not willing to endorse at all I believe that the normal school should be located as soon as possible. There is another institution of vast importance here and that is a moral reform school; and I do not believe in holding the location of any of these institutions in abeyance to the permanent location of the place where the distinguished statesmen of the territory are to meet and make laws for the people I therefore hope that the gentleman's amendment will be modified, or that it will be voted down

Mr. Hartman of Gallatin: If I may obtain the consent of my second I will withdraw so much of my substitute as is included within the proviso, and that will be simply to strike out Section 6 and leave Section 1 in lieu thereof.

The President: The motion is not in order. The question now before the convention is upon the adoption of the substitute offered by the gentlemen, to which an amendment is proposed by the gentleman from Madison.

Mr. J. R Toole of Deer Lodge: The only way to get at this matter is to vote upon the section and vote it down. I do not believe for one moment that there is any gentleman here that desires to hamper any of the counties that desire to bid for the capital or buildings, and I do not believe they intend anything of that kind. It strikes me the proper thing to do is to vote it down and let this remain as it is. Section 1 covers the ground probably as fully as is necessary, and I have no doubt that any legislature that will meet here will be in favor of dividing those institutions up, one in each county. I hardly think there is any danger or that we run any risk in leaving this matter to the legislature, and I think that Section 1 covers the ground fully enough so that any amendments are unnecessary; and it seems to me the natural way to arrive at the matter is by voting the amendments and the section down.

The President: The Chair will state to the gentleman and also to the gentleman from Gallatin that this substitute has been offered as an amendment to the proposition. It has not been adopted yet, but it can be disposed of by voting upon it Hence, the motion to strike it out will not be in order unless you propose to substitute something in lieu thereof.

Mr. Hickman of Madison. I move to strike out and insert.

The President: There is a motion to amend offered by the gentleman from Madison.

The Clerk read the amendment offered by the gentleman from Madison, as follows: Provided that no appropriation of money shall be made to erect capitol buildings prior to the year 1900.

The amendment was seconded.

The President: It is moved and seconded that the amendment be adopted, that is, to strike out the substitute offered by the gentleman from Beaverhead and insert in lieu thereof this provision.

Mr. Parberry of Meagher: There are too many amendments and substitutes.

The President: They are all now embodied in this one amendment.

Mr. Parberry of Meagher: The proposition to postpone the location of these public buildings until the permanent location of the seat of government is determined, I think is nothing but fair and just. Here is nearly one-half of the territory lying bare beyond where I live, and it is as fine a mineral country and agricultural country as any; and to locate these buildings now is taking advantage of all that part of the territory. Gentlemen here asserted that they did not wish to bar any county out of that privilege, and to locate it now or in a year or two would virtually be barring that whole half of the territory of this privilege. That part of it I am not in favor of.

Mr. Maginnis of Lewis & Clarke: I am very sure that there is no intention on the part of any gentleman of the convention to do the thing spoken of by my friend from Deer Lodge (Mr. Toole), or to bar any county in the territory from competing for the capitol, or any other of these buildings. Now, we have made a pretty warm fight on this proposition, which has been ended, and if we have done so it is not because we did not recognize the right of every county in the territory to go before the people for this capital, and we don't want to put any handicap on them; and the reason why we made this fight so warm was because the people put it here and the people ought to take it away. But when the people come to vote on it finally, we don't want any handicap put on any county or town. I did at one time think I would support the proposition of my friend from Beaverhead because during the debate some accusations were made here. It was said that we wanted not only the capital but all the other public buildings. That was the reason I wished to vote for the proposition; but I think I will vote to leave the whole matter to the legislature and let them fix the matter up as they see fit—except as to the proposition of my friend Dr. Parberry. I am opposed to that. I don't care where this capital is located. I do think that the men who climbed these mountains, crossed the plains and braved the dangers of savage warfare in order to make way for those who came after should see the dome of this State House rise in the blue mountain air before they die; and consequently I think I shall be compelled to vote against the proposition of my friend from Meagher, that the proposition of the location of the capitol shall be postponed to a time that few of us will see.

Mr. Parberry of Meagher: I move to take a recess until eight o'clock.

Mr. Knowles of Silver Bow: I move we adjourn.

The motion was seconded.

The President: Before the motion is put the Chair desires to state the position of this question, so that the convention may understand it on reconvening. The Chair understands that the gentleman from Madison withdraws his amendment entirely. Now, the question before the convention will be upon the substitute offered by the gentleman from Beaverhead, Mr. Witter. The question now is on the motion to adjourn.

The Chair then put the question on the motion to adjourn, and the same was daclared carried.

The Convention adjourned until Tuesday, August 13, 1889.

THIRTY-THIRD DAY.

Tuesday, August 13th, 1889.

The convention was called to order by the President at 10 A. M.

The Clerk called the roll.

The President: Mr. Dyer asked to be excused. He is ill If there be no objection he will be excused

The Chaplain offered prayer.

The Clerk read the journal of the previous day.

Mr. Warren of Silver Bow: We are approaching the last hours of this convention, and it strikes me that the apportionment committee should make their report, instead of waiting until the very last hour. It is a matter that will require some attention and some thought, and I therefore move that the Chairman of the Committee on Apportionment be requested to make his report tomorrow morning

Mr. Cooper of Gallatin: The Committee on Apportionment will make their report probably tomorrow morning

The President. The Chairman of the Apportionment Committee states that he will probably be able to make his report tomorrow. The report of the Irrigation Committee will now be read.

The Clerk read as follows: Mr. President Your Committee on Irrigation, to whom Resolution No 13 was referred, have instructed me to report that they have duly considered the same and that they do not think it advisable to memorialize Congress on the subject of arid lands.

Respectfully,
(Signed) PARBERRY, Chairman.

Mr. Maginnis of Lewis & Clarke: The visit of the senators here and other matters have somewhat changed the situation, and I move that the report of the committee be accepted and the matter laid on the table.

The motion was seconded

The Chair put the question on the said motion and the same was declared carried

Mr Goddard of Yellowstone: I move that the convention now resolve itself into Committee of the Whole for the consideration of Proposition No. 33.

The President That comes under the head of General Orders. We are under the head of "Unfinished Business" at present

Mr Knowles of Silver Bow In relation to some matters in regard to irrigation and the right of way for ditches, and the reservoirs, and the titles that the government had in all the mountain lands of the country, and the fact that they are unsurveyed and are not likely to be surveyed very soon, the Irrigation Committee recommended that this body memorialize Congress. As to the proposition that there would be any arid lands appropriated to the Territory or given to any corporation or company that might be organized for the purpose of constructing ditches, they said Congress never would grant any more lands to corporations for any purpose. That was the settled policy of the government. As to what they could do in relation to legislation on the subject of these lands themselves that might facilitate the matter of irrigation and of reclaiming arid lands, there could be something done, they said and that it would be good policy for this convention to memorialize Congress on this subject.

Mr. Maginnis of Lewis & Clarke Then, Mr. President, if there is no objection, I would ask unanimous consent to reconsider what we have done and re-refer the resolution of the committee so as to give them jurisdiction and let them draw the memorial covering the branches suggested by Judge Knowles. I move that the matter be taken from the table.

The motion was seconded.

Mr. Kohrs of Deer Lodge: I think it would be better to leave that to the Legislature

The Chair put the question on the said motion, and the same was declared lost.

The Clerk read the following communication

Helena, Mont., August 12, 1889 Hon. W. A. Clark, President Constitutional Convention Sir I hereby tender my resignation as Assistant Sergeant at-Arms, the same to take effect today. Very respectfully,

W L GREENE, Asst Sergeant-at-Arms.

Mr Burleigh of Custer I move the resignation be accepted.

The motion was seconded

The Chair put the question on the said motion, and the same was declared carried

Mr. Warren of Silver Bow: Mr. Sargent of Silver Bow County would like to be excused until tomorrow.

The President: The gentleman will be excused if there be no objection. Under the head of unfinished business, the convention had under consideration Proposition No 18, which is now in order. There was an amendment offered by the gentleman from Beaverhead, and the question was upon the adoption of the amendment to add Section 6. The Clerk will read the amendment.

The Clerk read as follows: Section 6. It shall be the duty of the Legislative Assembly to make provision as soon as practicable for a State University. School of Mines, State Normal Schools, Agricultural Colleges, State Reform School, Deaf and Dumb Asylum, Insane Asylum and two State Penitentiaries. Provided, that not more than one of such institutions shall be located in any one county in the State, and none of them in the county in which the capital of the State is located.

The President: The following provision was added to that afterwards by the convention: Provided that no State institution shall be located until the capital of the State shall have been located.

Mr. Burleigh of Custer: I desire to ask if there is any provision there for the Legislature creating a reform school?

Mr. Witter of Beaverhead: I think the substitute or the amendment offered by the gentleman from Gallatin that was read for the information of the convention, would be more satisfactory, after the discussion of the matter that was had yesterday.

The President: There was an amendment offered by the gentleman from Gallatin, Mr. Hartman. which will now be read.

Mr. Witter of Beaverhead: I think it obviates the difficulties that we encountered yesterday.

The Clerk read as follows: Add to Section 1 the following: Provided that no more than one of said institutions may be located in any one county in the State, and no one thereof shall be located in the county where the capital is situated; Provided, further, that the present location of the penitentiary in Deer Lodge County shall not bar said county from having located within its limits any other State institution.

Mr. Witter of Beaverhead: I move the adoption of the amendment, virtually striking out Section 6 and adding that as a proviso to Section 1.

The President: Section 6 has not been adopted yet. The question now before the convention is upon the adoption of Section 6, this amendment offered in the way of a substitute.

Mr. Hartman of Gallatin: This is an amendment to Mr. Witter's amendment.

Mr. Middleton of Custer: If I understand the reading of that correctly, although in the outset it provides that not more than one of these institutions shall be established in any one county, the proviso afterwards takes the county of Deer Lodge out, and from the reading of it, leaves the impression on my mind that all of these institutions might be established in the county of Deer Lodge.

The Clerk re-read the amendment for the information of the convention.

Mr. Dixon of Silver Bow: It seems to me it would be better not to make any amendment. It seems to me perfectly safe to leave this matter to the Legislature and let them regulate it It may be very desirable, it seems to me, as matters may turn out, that more than one of these institutions should be located in one county. The relations between them would be a great deal better for the State if they were located near each other, and in reference to all these matters it seems to me that the matter could be left to the Legislature to regulate it as it may see fit. So far as I am concerned, I am opposed to any amendments whatever. or any provision in reference to the matter. The first section of Article 18 here seems to me to be sufficient for all practical purposes. "Educational, reformatory and penal institution, and those for the benefit of the insane, blind, deaf and mute and such other institutions as the public good may require, shall be established and supported by the State in such manner as may be prescribed by law." I think that as this provision stands, that would leave the Legislature to regulate this matter without restricting them in any way. I do not think they ought to be restricted until the time the capital is permanently located. It may be desirable to locate them before that time, and I am opposed to all these amendments and all these substitutes, and I am in favor of leaving the matter as provided for in that section.

Mr. Burleigh of Custer: I agree fully with what has been said by the learned gentleman from Silver Bow County, and as I said yesterday, to defer this matter by any provision in this constitution seems to me would be unwise. We do not know how soon the Legislature would deem it expedient to locate some one of these institutions, and I think it would be safe to leave this matter to the Legislature fresh from the people and let them take care of it.

Mr. Whitehill of Deer Lodge: I agree with the gentleman from Silver Bow, Mr. Dixon. I think there is no doubt the convention can scatter these institutions over the country Now, it seems as though this was in the interest of the small counties; it seems as though the little counties were being afraid. To be sure, this convention could go on and locate each one of these institutions through the different counties, there may in the future arise some contingency whereby we would not care to have them located just as the members of this convention would like to have them located, and I think we ought to be willing to trust the Legislature to arrange these counties and locate these different institutions as the necessity arises. I don't think there will be any disposition to filch any of them out of their just rights, in this matter. I think Section 1 covers the ground fully It provides that the Legislature shall whenever the necessity arises, locate each one of these institutions wherever the people of this Territory, or the members of the Legislature at that time, may think the proper place for it, and that then would be the proper time to locate them and not now.

Mr. Knowles of Silver Bow: There is one other point that has not been noticed in relation to this provision of the constitution, and that is the words, "other institutions of learning" –other State institutions. Now, it is difficult to say what other State institutions we may wish to establish in time, and it may be that some of these institutions that we would wish to establish ought to be connected with the State university. For instance, there might be such a thing as a medical school established in Montana, and if so, it ought to have some connection, in my judgment, with the State university. Lecturers in colleges who are sometimes employed in one department and sometimes in another, and where we have that provision "other institutions of learning", in my judgment, we ought to leave it to the Legislature to provide where those institutions shall be established. A few weeks ago I saw an article written by one of the Associate Justices of the Supreme Court of the United States upon Iowa, and he takes occasion in that article to criticise the action of the Methodist church that is so called in that State, for having divided the State into four sections and establishing four institutions of learning in that State, none of which are prosperous and none of which take any rank as such institutions ought, and when we establish a State university we ought to establish a university. Now, of course the Deaf and Dumb Asylum or a Reformatory School and such matters as that, having nothing to do with the University, but there may be institutions and public institutions that ought to be connected with this university, and make one good university –one that is entitled to the claim of a university—is worth half a dozen insignificant ones. I trust that when Montana establishes a university that it will have the right to place there everything that should pertain to a university; and as this section stands now, why, I feel confident that there ought to be no proviso put in there, leaving it to the Legislature to decide according to the facts as they may be presented to them at that time We have not all of the facts that may arise in the history of Montana; other facts may arise in the history of Montana that will control the action of a legislative body, that are not presented to us now, and I trust that section will be left just where it is. Give power to the Legislature to provide for these institutions. and that is all we want.

Mr Maginnis of Lewis & Clarke: In the line of the gentleman's remarks, I would state that that is substantially the report of the committee, and that is the reason instead of having a Board of Regents we confined them all under one Educational Board, because it was shown in other States where they established these technical and other schools that they encroached upon the domain of each other. If it should be found advisable to give dignity and power and reputation and efficiency to the university, the committee were of the opinion that they should be in one place, and I fully agree with my friend, Judge Knowles, in this that they should all be in one place

Mr. Reek of Deer Lodge: I would like to say that the institution of Ann Arbor, Michigan, is one of the finest institutions in the United States of the kind, and I understand they have there many of these different branches, which it seems is the disposition to scatter over the Territory. Now, if there is a law school established at the University, I think they should both be in one place. If this amendment prevails it will preclude the possibility of establishing many of these branches in the same town, and I hope it will not prevail.

The President: The question is upon the adoption of the substitute offered by Mr. Hartman of Gallatin.

The Chair put the question on the adoption of the substitute offered by the gentleman from Gallatin, Mr. Hartman, and a vote being taken the same was declared lost.

The President: The question now is upon the adoption of the section offered by the gentleman from Beaverhead, Mr. Witter.

The Chair put the question on the motion of the gentleman from Beaverhead, and a vote being taken the same was declared lost.

Mr. Warren of Silver Bow: I move that Proposition No. 18 be now placed upon its final passage.

Mr. Schmidt of Silver Bow: I move to strike out Section 5.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Schmidt, and a division being called for the same was declared carried by a vote of 27 in the affirmative to 24 in the negative.

Mr. J. R. Toole of Deer Lodge: If the provision of Section 2 was adopted, and it was the sense of this convention that the Legislative Assembly should provide by law for an election to fix the capital, if it is possible now I should like to have such an expression of the convention as to whether that would be deemed advisable or not.

Mr. Maginnis of Lewis and Clarke: The convention voted on that proposition twice, and the motion was lost both times.

The President: That was adopted in amendment offered some days ago.

Mr. J. R. Toole of Deer Lodge: I understood it was indicated that the first Legislature should provide by law.

The Chair requested the Clerk to read the section as it stood

The Clerk read same.

Mr. J. R. Toole of Deer Lodge: I believe that covers the ground I was aiming at, that the next Legislature would provide for the submission.

The President: The question now is upon the motion of the gentleman from Silver Bow, Mr Warren, to place Proposition No. 18 as amended on its final passage.

Mr. Middleton of Custer: I hope this will not be done. I think it is a dangerous precedent we have established for putting a proposition on its final passage where several amendments are made, and then it goes to the Enrolling Committee and does not come back to the convention except through the Committee on Revision. The probabilities are that there will be mistakes. It seems to me the proposition should be engrossed and submitted for a final vote of this convention. I move you as an amendment that it be referred to the Engrossing Committee with instructions to engross it.

The motion was seconded.

Mr. J. K. Toole of Lewis & Clarke: I trust that will not be done. There is but one amendment—just one section stricken out and another one inserted. Let it be read again for information.

The President: The Clerk will read the proposition as it stands amended.

The Clerk read the proposition as amended

Mr. Kanouse of Meagher: It has been stated to me that the striking out of Section 5 of this proposition would have the effect of compelling the State to make provision for the poor of several counties. I voted in the affirmative upon the motion to strike out that proposition, and at that time it did not occur to me that such a view would be taken. I desire to move that the motion by which Section 5 was stricken out be reconsidered.

Mr. Goddard of Yellowstone: It occurs to me that the Legislature would have that authority without a provision of this kind in the constitution.

Mr. Knowles of Silver Bow: I will say this, that if there is any danger of this first section receiving the construction that has been stated here, that there ought to be an exception put in that section. This Section No. 5 that they have here would not be any limitation upon the first section. Now, Section 5 neither limits the power of the Legislative Assembly in any manner whatever, nor does it locate the power of the general government, nor does it grant any power to the general government. It is a provision here in relation to the several counties of the State, that the several counties of the State may do certain things, as though we were here forming a constitution and granting the counties of the State certain powers. Well, now, we don't want to put anything of the kind in the constitution. If it is thought that that would have the effect—and there might be some question about it, that provision here ought to be put in this—"such other public institutions as the public may require, except such as poor houses and county farms," and such matters as that. If it is thought that this first section here, which certainly was not intended to be anything of the kind—"Educational, reformatory and penal institutions, and those for the benefit of the insane, blind, deaf and mute and such other institution as the public good may require shall be established and supported by the State in such manner as may be prescribed by law." Now, as to the words, "such other institutions," I was under the impression that referred to educational institutions and such institutions as that, and that what we call a poor farm and a poor house was not an institution. It would never be considered usually a state institution, but if it is, we don't want it in that section here, because that Section 5 neither grants any power to the State nor restricts any power of the State.

Mr Maginnis of Lewis & Clarke Mr President, I notice that the Reverend Dr. Talmage is in the gallery, and I move that this convention extend the privileges of the floor to the gentleman and his party.

The motion was seconded.

The President It is moved that the Reverend Dr. Talmage and his party be invited to the privileges of the floor of the convention.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, Major Maginnis, and a vote being taken, the same was declared carried

The Chair appoint Honorable Martin Maginnis to escort the gentleman to the floor.

The question is upon the motion to reconsider the vote by which Section No. 5 was stricken out.

Mr. Robinson of Deer Lodge. I am opposed to this motion prevailing. I voted to strike this Section 5 out for the reason that it is ununecessary to have that in the constitution. Under the general police powers of the State, without any clause being inserted in this constitution save for that purpose, we have the right to make all the provisions necessary that are provided for in this Section 5, and being unnecessary in the constitution I voted to strike it out.

Mr. Burleigh of Custer It seems to me, sir, that this is a power which rests originally with the people, and I shall support the motion of the gentleman to strike out this Section 5, for the reason that it neither adds to nor takes from the Legislature the power to do that which is prescribed The prescription here that they shall do it is not binding on the Legislature, in my judgment. There is certainly nothing in Section 1 that limits the power of the Legislature to provide for its poor and infirm. I think it is a power which is inherent in the people, and the humanity of the people has always been such as to look after their own poor and suffering, and they will continue to do so unless there is something in this constitution to prevent it. I shall therefore support the motion to strike out.

Mr. Whitehill of Deer Lodge The members of this convention will remember that when this section was up before, I had inserted in the section the words "Soldiers' Home" for the reason that one State had decided that unless that provision was in this original section—this first section—that that would come under Section 5, and for that very reason they decided that an act of the Legislature providing that a soldiers' home was an institution that should be provided for by the State, and that by reason of Section 5 it was unconstitutional and the act of the Legislature was set aside by the Supreme Court. Now, this Section 5 provides that the county paupers, in short, shall be supported by the respective counties. Section 1 provides "and such other institutions as the public good may require." Now, all institutions that the public good may require, as we have it now, shall be supported by the State, to be sure. This is a matter which we can fix here by this constitution, and although it does not negative the power of the Legislature, eventually it is a limitation upon the power of the Legislature so that they cannot pass an act contrary to

Section 1, wherein it is provided that the State must support all these public institutions. Now, as Judge Knowles says, if there were an exception in there then it would be all right? Now, I say this Section 5 is just and should not be stricken out. If we ever go into court to decide this matter, the court will decide that the counties are relieved from supporting their own paupers, and these paupers must be provided for in institutions supported by the State. That is the reason I have asked these gentlemen who have voted in the affirmative to have it reconsidered, and I don't believe it has been fully discussed The result of this will be if Section 5 was stricken out that county paupers will be supported in State institutions. I think the action in striking out Section 7 was hasty and ought to be reconsidered, and Section 5 should be left in just as it is.

Mr. Hartman of Gallatin: In order to bring this matter squarely before the convention, I move to amend Section 1 by adding thereto.

The President: The motion will not be in order.

Mr. Bickford of Missoula: It seems to me that the provisions contained in Section 5 are intended simply as a limitation upon the almost universal power conferred in Section 1 of this article. It should not be a limitation upon the powers of the people, but it is a limitation to Section 1, and changes the rule so far as the establishment of county poor houses is concerned. Therefore, I think if Section 5 is stricken out that there should be inserted in Section 1 a limitation upon that section itself, so that the State would not be called upon under Section 1 to support county poor houses. If you could insert "except county poor houses" the difficulty apprehended by the gentleman from Deer Lodge, who has just spoken, would be made, and the objections of the gentleman from Silver Bow would also be made, because then it would be such a limitation upon the power of the Legislature, or upon the duty of general State government as you contemplate by the article generally, and that is that certain institutions shall be supported by the State, and that the county poor houses shall be supported by the county.

The President: The question now is upon the motion to reconsider the vote by which Section 5 was stricken out.

The Chair put the question on the said motion and a vote being taken the same was declared carried.

Mr. Luce of Gallatin: I move that Proposition No. 18 as amended be put upon its final passage.

The motion was seconded.

The Chair stated the motion.

Mr. J. R. Toole of Deer Lodge: In the wording of Section 2 I notice that the election is provided for in 1892, and as we are going to pass this without having it printed, which I think is hardly necessary, in order to get the sense of the convention once more, I move to strike out 1892 and insert 1890.

Mr. J. K. Toole of Lewis & Clarke: I object to that, Mr. President, that is not in order.

The President: An amendment to that section is not in order; it was adopted and on motion to reconsider was laid upon the table. The motion is not in order except by unanimous consent. The question now is upon the motion to adopt Proposition No. 18. The ayes and nays will be entered on the journal.

The Clerk called the roll. The vote stood as follows:

Ayes: Aiken, Bickford, Brazleton, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J ; Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Craven, Eaton, Fields, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Hershfield, Hickman, Hobson, Joy, Joyes, Kanouse, Kennedy, Loud, Luce, Maginnis, Marrion, Marshall, Mayger, McAdow, Middleton, Mitchell, Muth, Myers, Parberry, Reek, Robinson, Rotwitt, Toole, Jos. K.; Watson, Witter, Mr. President—53.

Nays: Courtney, Dixon, Durfee, Hatch, Hogan, Knowles, Kohrs, Schmidt, Stapleton, Toole, J. R.; Warren, Whitehill, Winston—13.

Absent: Burns, E.; Dyer, Gaylord, Haskell, Knippenberg, Ramsdell, Rickards, Sargent, Webster—9.

The Chair announced the vote and declared the motion to adopt Proposition No. 18 carried and the proposition adopted.

Mr. J. K. Toole of Lewis & Clarke: I move to reconsider the vote by which that proposition was adopted, and I move to lay that motion on the table.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, Mr. Toole, and a vote being taken the same was declared carried.

Mr. Carpenter of Lewis & Clarke: I ask unanimous consent to submit a proposition, and ask its reference to a committee.

The President: The gentleman from Lewis & Clarke, Mr. Carpenter, asks the unanimous consent to offer the following proposition to be incorporated in the constitution.

The Clerk read as follows: Sec. .... To be added to article on Suffrage. Upon all questions submitted to the taxpayers of the State, or any political division thereof, women who are taxpayers and possessed of the qualifications for suffrage required of men by this constitution shall equally with men have the right to vote.

The President: If there be no objection this will be received and referred to the Committee on Suffrage.

Mr. Robinson of Deer Lodge: I object. We have had enough talk about women.

Mr. Callaway of Madison: I move that the rules be suspended and it be referred to the Committee on Suffrage.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Madison, Mr. Callaway, and a division being called for, the same was declared lost by a vote of 40 in the affirmative to 22 in the negative, the necessary two third vote being required to suspend the rules.

Mr. Warren of Silver Bow. I move that the convention resolve itself into Committee of the Whole for the consideration of Proposition No. 33, Ordinances, and in this connection I would say this. While it is placed at the foot of the General File, during this week county conventions will meet all over the Territory, and they do not know whether to nominate a county ticket or not. This will dispose of that matter.

The motion was seconded

The Chair stated the motion.

Mr. Middleon of Custer· If I understand it, this matter was placed at the foot of the calendar to be considered last, and that it can only be taken up upon a reconsideration of that action.

The President: The Chair is of the opinion that the gentleman is correct.

Mr. Warren of Silver Bow: I will withdraw that motion so far as it relates to the Committee of the Whole, and now make a motion that the rules be suspended and we take the matter up in open convention.

The President: It would require a reconsideration of the vote by which it was placed on the calendar.

Mr Collins of Cascade: I move that we go into Committee of the Whole on General File.

The motion was seconded

The President. The point of order raised was that the convention had already decided to place it at the foot of the calendar, and that it can only be reached by a reconsideration The question before the convention now is that the convention do now resolve itself into Committee of the Whole for the consideration of General Orders.

Mr. Witter of Beaverhead Do I understand this would have to be reconsidered by the convention?

The President: It was in the convention that the matter was adopted, and was therefore the action of the convention.

Mr. Collins of Cascade: I will state that according to my idea of it, we can go into Committee of the Whole, and can act upon any one of those propositions.

The President: The Committee of the Whole could not act upon that proposition without being so directed by the convention, inasmuch as they have decided to place it at the foot of the calendar.

Mr. Eaton of Park: I presume I voted in the affirmative to place Proposition No. 33 at the foot of the calendar. I move that the vote whereby that was placed at the foot of the calendar be reconsidered.

The President: The motion is not in order, except by unanimous consent. It has been several days since that was done.

Mr. Robinson of Deer Lodge: I object.

Mr. Collins of Cascade: If this motion is carried and we go into Committee of the Whole upon the General File, is it not in the province of the committee to consider any proposition on the general file?

The President: Any proposition except that one.

Mr. Collins of Cascade: Why not that one?

The President: Because the convention put it at the foot of the calendar.

Mr. Collins of Cascade. But the convention has not decided that anything else shall be done with it.

The President The Chair understands that placing it at the foot of the calendar means that it shall be last considered.

Mr. Collins of Cascade: I don't so understand it

The President: The Chair can see no object in placing anything at the foot of the calendar, except that everything else shall be considered first.

Mr. Warren of Silver Bow: If you will reflect, this proposition No. 33 was made the special order for last Thursday, right following the capital question.

Mr. Callaway of Madison: As a matter of fact and of parliamentary practice, I would like to ask of the presiding officer what authority has this convention over the Committee of the Whole to give it any orders or any directions? The Committee of the Whole, I contend, as an authorized body, has a right to do anything it pleases, no matter what it pleases, and I am of the opinion of the gentleman from Cascade that we have a right to go into Committee of the Whole and take up any of these propositions.

The Chair would inform the gentleman from Madison that the convention has a right to instruct any committee, the Committee of the Whole as well as any other committee.

Mr. Luce of Gallatin: I heard no objection to the motion offered by the gentleman from Park County, that the convention reconsider the vote by which this matter was placed at the foot of the calendar.

The President: Objection was made to the reconsideration.

Mr. Robinson of Deer Lodge: If a motion to suspend the rules is in order, I move the convention that we suspend the rules, and let the convention proceed then to take up the General Order of business instead of going into Committee of the Whole It seems under the rules of the convention that it serves no purpose whatever to go into Committee of the Whole but to delay time, and if we have to go into Committee of the Whole and go over everything again in the convention after discussing it in Committee of the Whole; it takes double time and serves no purpose whatever, except to delay our action.

The President: If the gentleman will yield his motion the Chair will state the motion of the gentleman from Cascade.

The Chair stated the motion.

Mr. Kanouse of Meagher: I desire to second the motion of the gentleman from Cascade, that this convention now resolve itself into Committee of the Whole for the consideration of General File.

Mr. Witter of Beaverhead: Before we go into Committee of the Whole, I would ask what was done with Proposition No. 38

The President: The Clerk informs the Chair that the proposition has been printed and distributed, and is on the desks of the members at present The question before the convention is that the convention do now resolve itself into Committee of the Whole for the consideration of General File.

The Chair put the question on the said motion, and a vote being taken the same was declared carried.

The President called Mr. Collins of Cascade to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr Collins of Cascade in the Chair.

The committee was called to order.

The Chairman: The committee have under consideration the General File. What is the pleasure of the committee?

Mr. Kanouse of Meagher: I move that the committee take up Proposition No. 33, found at the foot of the calendar.

Mr Middleton of Custer: I object to it for the reason that the convention has instructed this committee that this matter should be placed at the foot of the calendar. The only way it can be reached in Committee of the Whole at this time is by taking up each of the other matters on the calendar and postponing their consideration until this can be reached.

The Chairman The Chair would state that the proposition was placed at the foot of the calendar, but is not at the foot of the calendar now.

The Chair put the question on the motion of the gentleman from Meagher, Mr Kanouse, and a vote being taken, the same was declared carried.

The Chairman. The Clerk will read Section 1 of Proposition No 33.

The Clerk read Section 1 of Proposition 33 as follows: "Ordinances. Be it ordained First, That an election shall be held throughout the State of Montana on the First Tuesday of October, for the ratification or rejection of the constitution framed and adopted by this convention."

There being no amendment to Section 1, the Clerk read Section 2, as follows: "Second, At said election the constitution framed and adopted by this convention shall be submitted to the people of the State for their ratification or rejection, and all persons who are then qualified electors under the laws of this Territory shall be qualified to vote for the ratification or rejection thereof "

There being no amendment to Section 2, the Clerk read Section 3 as follows "Third, Said elections shall be held at the several places in the several wards and precincts throughout the Territory appointed for the holding of elections under the laws of this Territory, and shall be conducted in the manner prescribed by the laws of this Territory regulating elections The Board of County Commissioners of the several counties of this Territory shall appoint judges and clerks of such election in each of said wards and precincts in the same manner as is now required by law for the appointment of judges and clerks of general elections in this Territory "

There being no amendment to Section 3, the Clerk read Section 4 as follows. Fourth, Each elector voting at said election shall have written or printed upon the ticket he may deposit in the ballot box the words "for the constitution" or "against the constitution", or other equivalent words.

There being no amendment to Section 4, the Clerk read Section 5 as follows: "Fifth, The votes cast at said election for the adoption or rejection of said constitution shall be canvassed not later than fifteen days after said election, or sooner, if the returns from all of the precincts shall have been received and in the manner prescribed by the laws of the Territory of Montana for canvassing the votes at general elections in said Territory, and the returns of said election shall be made to the Secretary of the Territory, and the Governor, the Secretary, Auditor and Attorney General of the Territory and the President of this convention, or a majority of them shall constitute a Board of Canvassers, who shall meet at the office of the Secretary of the Territory on the thirtieth day after the election, and canvass the votes so cast and declare the result "

Mr. Robinson of Deer Lodge sent up an amendment.

The Clerk read as follows: Amend Section 5 by striking out of lines 5 and 6 the word "and' and the words, "Secretary, Auditor and Attorney General" and the words "and the President of this convention" and insert in lieu thereof after the word "Territory" on line 5 the words "who with" and after the word "governor' add "and the Chief Justice."

Mr. Robinson of Deer Lodge I move the adoption of that amendment.

The motion was seconded.

The Chair stated the motion

Mr. Robinson of Deer Lodge This is just simply in accordance with the Enabling Act.

The Chair put the question on the motion of the gentleman from Deer Lodge, Mr Robinson, and a vote being taken the same was declared carried.

Mr. Burleigh of Custer: I move that we turn back to Section 2 and strike out the word "State" and insert "Territory". We are not a State until after the matter is voted upon.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer, Mr. Burleigh, and a vote being taken the same was declared carried.

Mr. Robinson of Deer Lodge: In order to make it in harmony with that, I move to strike out the word "State" on the first line of Section first.

The Chairman: The word will be stricken out if there be no objection.

Mr. Whitehill of Deer Lodge: I move to strike out in Section 4 the words "or other equivalent words". The reason I make that is that it can be printed "for the constitution" or "against the constitution", and if those words "or other equivalent words" are left in there, there will be half a dozen modes of expressing that idea. So I ask that the words be stricken out.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Deer Lodge, Mr. Whitehill, and a vote being taken the same was declared carried.

Mr. Craven of Lewis & Clarke: I move the unanimous consent to return to Section 1 for the purpose of amendment I think the words "1892" should be in line 2 after the word "October". There is no year designated. I offer a motion to that effect.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, and a vote being taken the same was declared carried.

Mr. Marshall of Missoula: Before we go to Section 6, I move to amend Section 5 on the last line by inserting "or before" after the word "on", so that the Board of Canvassers shall meet at the office of the Secretary of the Territory on or before the thirtieth day after the election.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Missoula, Mr. Marshall, and a vote being taken, the same was declared carried.

There being no further amendments to Section 5, the Clerk read Section 6, as follows: "Sixth, That on the first Tuesday in October there shall be elected by the qualified electors of Montana, a Governor, a Lieutenant Governor, a Secretary of State, an Attorney General, a State Treasurer, a State Auditor, a Superintendent of Public Instruction, one Chief Justice and two Associate Justices of the Supreme Court, a Judge for each of the Judicial Districts established by this constitution, a Clerk of the Supreme Court, and a Clerk of the District Court for each of the Judicial Districts established by this constitution."

Mr. Luce of Gallatin sent up an amendment to Section 6.

The Clerk read as follows: Amend Section 6 by striking out of lines 6 and 5 the following, "for each of the Judicial Districts established by this constitution," and inserting the following, "in and for each county of the State."

Mr Luce of Gallatin: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Gallatin, Mr Luce, and a vote being taken the same was declared carried.

Mr. Craven of Lewis & Clarke sent up an amendment.

The Clerk read as follows: Insert on first line in Section 6 after the word "October" the words "in the year 1889".

The Chairman: If there be no objection these words will be inserted

Mr. McAdow of Fergus: I move to insert the word "State" before the word "Superintendent" in line 3.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Fergus, Mr. McAdow, and a vote being taken the same was declared carried.

Mr. Goddard of Yellowstone: Proposition No. 6, which I introduced, I believe was by order of the convention ordered to be considered with this proposition I ask to have it read before Section 7.

The Chairman: Section 7 and the resolution offered by the gentleman from Yellowstone will now be read. Section 7 will be read first, and then the resolution of the gentleman from Yellowstone.

The Clerk read Section 7 as follows: "Seventh, That notice for such election for State, County and Township officers, shall be given by the several Boards of County Commissioners in the same manner as notices of general elections for delegates to Congress, and county officers, under the now existing laws of the Territory, and such election shall be conducted and held and the votes canvassed in the same manner as provided by law for territorial officers, and all State, county and township officers shall qualify and enter upon the discharge of their duties as such on the first Monday of January following such election."

Mr. Goddard of Yellowstone: I move to have the resolution read, and that it be added to Section 6.

The Clerk read as follows: "All county and precinct officers who may be in office at the time of the adoption of this constitution shall hold their respective offices for the full term for which they may have been elected, and until such time as their successors may be elected and qualify in accordance with the provisions of this constitution and the laws now in force; and the official bonds of such officers shall continue in full force and effect as though this constitution had not been adopted"

Mr. Goddard of Yellowstone: I wish to say that that provides for all county officers; I wish to amend that so as to except Probate Judges. If the Clerk will write in there after "county officers" "except Probate Judges", I ask that it be added to Section 6.

Mr Luce of Gallatin: I offer an amendment

Mr. Knowles of Silver Bow: Aanother officer that ought to be excepted is the Treasurer. All the laws that provide for settlements of the County Treasurer provide for the settlements in March, and if we adopt those laws, there ought to be an exception as to the County Treasurer.

The Chairman: I would state to the gentleman from Silver Bow that the settlements are made quarterly The reason that the principal settlement with the Treasurer was made in March was because the new county officers went into existence early. Now, they don't go into existence until the first Monday in January.

Mr. Knowles of Silver Bow. There is no objection to that except the one office of County Treasurer, and if you will examine the statutes of the Territory it provides that the time the County Treasurer goes out of office is the second Monday in March. I am not sure but the law provides for a settlement with the County Treasurer before he goes out on the March term of the County Commissioners, and we will, I suppose, adopt those laws as our laws. Well, now, if you make the County Treasurer go out of office in January, why, the settlement that he makes will be with his successor in office, and then his successor in office will have to make this settlement on the first Monday in March. I would like to insert in there "except County Treasurers". The Probate Judge will be abolished anyhow

Mr Goddard of Yellowstone: I will accept the gentleman's amendment. I will just say to the gentleman that the term of the office of the Treasurer does not expire until March anyhow. This resolution provides that they shall hold their office for the full time for which they were elected.

The Chairman: The question before the committee is upon the motion of the gentleman from Yellowstone, that his resolution be adopted.

The Clerk read the resolution for the information of the committee.

The Chair put the question on the motion of the gentleman from Yellowstone, Mr. Goddard, and a division being called for the same was declared carried by a vote of 31 in the affirmative to 30 in the negative.

Mr. Maginnis of Lewis & Clarke: I call for tellers on that count.

Mr Burleigh of Custer: Let it go into the convention and consider it by ayes and nays

The Chairman: The committee will now consider Section 7.

The Clerk read Section 7 as follows: "Seventh, That notice for such election, for State, county and township officers, shall be given by the several Boards of County Commissioners in the same manner as notices of general elections for delegate to Congress and county officers under the now existing laws of the Territory and such election shall be conducted and held and the votes canvassed in the same manner as provided by law for territorial officers, and all State, county and township officers shall qualify and enter upon the discharge of their duties as such on the first Monday of January following such election."

Mr. Burleigh of Custer: I move to strike out the word "county" in the first line of Section 7, and also in the fifth line of Section 7.

The motion was seconded.

The Chairman: There is a motion on the table from the gentleman from Gallatin, Mr. Luce, which will be read by the Clerk.

The Clerk read as follows: "Amend Section 7 by striking out the words 'county and township' in lines 1 and 5". Offered by Luce.

Mr. Luce of Gallatin. I move the adoption of the amendment.

The motion was seconded.

Mr. Luce of Gallatin: I will state my reasons for this, and that is to make it consistent with Section 6 that has just been passed and amended. There is no provision in that section as now amended for the election of any county or township officers, as I understand it, and Section 6 provides what officers shall be elected. It just simply makes it consistent with what has been done. I shall consider that the Clerk of a district court is a county officer. That seems to be a State institution rather than a county institution, and I think that to make the two sections consistent those words ought to be stricken out

The Chair put the question on the motion of the gentleman from Gallatin, Mr. Luce, and a division being called for the same was declared lost by a vote of 31 in the affirmative to 32 in the negative.

Mr. Knowles of Silver Bow: I move that after the word "county" in line 5 there be inserted the words "except County Treasurers."

The motion was seconded.

The Chair stated the motion.

Mr Clark of Silver Bow: I think the views of my colleague are quite correct on that proposition. Now, during the month of December is the time in which the taxes are paid, all through the month of December. The duties of the County Treasurer are very onerous, hence I think it right to postpone that until March.

Mr. Bickford of Missoula: I would suggest to the gentleman from Silver Bow that the section would read better if the amendment were placed after the word "officer" in line 5. It would then read "for territorial officers and all State, county and township officers, except County Treasurers shall qualify," etc

Mr. Knowles of Silver Bow: I accept the amendment of the gentleman.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Knowles, and a vote being taken the same was declared carried.

Mr. Carpenter of Lewis & Clarke sent up an amendment.

The Chairman The gentleman from Lewis & Clarke offers the following amendment: Strike out the word "such" and insert the word "the" on line 1 of Section 7, and after the word "officers" insert the words "whose election is provided for by the preceding section."

The motion was seconded.

Mr. Carpenter of Lewis & Clarke: I offer that as an amendment to remove any ambiguity That is the simple object of the amendment, to remove the ambiguity.

The Chair put the question on the motion of the gentleman from Lewis & Clarke, Mr. Carpenter, and a vote being taken the same was declared lost.

There being no further amendments to Section 7, the Clerk read Section 8 as follows: "Eighth, That perfect toleration of religious sentiment shall be secured, and that no inhabitant of the State of Montana shall ever be molested in person or property, on account of his or her mode of religious worship."

Mr. Joy of Park: In view of the fact that the idea of this paragraph is fully provided for in Section 4, General File No. 1 of the Bill of Rights, which reads that "the free exercise and enjoyment of religious profession and worship without discrimination shall forever hereafter be guaranteed," I move that the section be stricken out.

The motion was seconded.

The Chair stated the motion.

Mr. Hartman of Gallatin: Before any action is taken by this Committee of the Whole on that proposition, I desire to call attention to the fact that that section, and Sections 9, 10, 11 and 12 are taken verbatim from the Enabling Act, and that when we proceed here to interfere with the language that is contained in one of those sections, we interfere with that which is required by the Enabling Act, and I pretend to say that all such interference as that would imperil our chances of becoming a State, and I hope that not one single word will be disturbed in one of those sections It is drawn in accordance with the Enabling Act, and we will make a mistake if we disturb it

Mr Whitehill of Deer Lodge. There may be that language used in the Enabling Act, but I think the people of Montana are unanimous in one respect, and also the courts of the United States are unanimous in the same respect, that is, in regard to the prohibition of this Mormon sentiment or religion Now, for some time, for some time past, we all know that prosecution has been laid against people in Salt Lake City who practice this Mormon religion, for unlawful co-habitation. Now, if we pass this section in the words here, the question will arise hereafter whether or not any person practicing polygamy in Montana would be liable for prosecution, and by referring to Section 4 of the Enabling Act you will see that it has guaranteed the free exercise of religious profession and worship. Now, that is all that is required of us by the Enabling Act. We go on further and say "without discrimination, shall be forever hereafter guaranteed."

Mr Hartman of Gallatin I want to call attention to this fact, that the language of Section 4 reads "and State conventions shall provide by ordinance, irrevocably without the consent of the United States and the people of said State.". This is done by an ordinance

Mr. Whitehill of Deer Lodge If the convention shall provide, then I say move to amend that section in the ordinance by inserting what we have in the Bill of Rights. This question was not discussed very fully in convention, but it was discussed in the committee which framed this Bill of Rights The Bill of Rights says "But the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage." Now, in order to make this consistent it must be in the ordinance. Then, I say it ought to be amended to conform to Section 4, which we have already adopted, by inserting in there that it will not excuse acts of licentiousness by bigamous or polygamous marriage If we pass this section as it is now here, it will be in direct conflict with Section 4 of the Bill of Rights which we have already adopted; and that is the objection I make to it, that it does not exclude these polygamous contracts of the Mormon; and I think under the Edmunds Bill the government of the United States is in perfect harmony, that is, in that respect, and we do not propose to encourage polygamy here, and allow the Mormons to come here and practice their religion as they do in Utah. If this is adopted I don t see anything to prevent the adoption of that system of religion or practice here

Mr. Luce of Gallatin I want to ask if the general expression, the words "religious sentiment" can be construed to permit polygamous marriages. Is that a sentiment?

Mr Whitehill of Deer Lodge. I think it would.

Mr Luce of Gallatin: I think it is already provided for in the Bill of Rights that this religious toleration shall not excuse polygamous rites. The Enabling Act requires us to have this.

Mr Hershfield of Lewis & Clarke Mr. Chairman, it seems to me that the gentlemen in their statements have omitted to read carefully the different sections which provide for religious liberty in the Bill of Rights, and those in Proposition 38. One is in the protection of the religious rights, and the other is in the protection of their property—"the perfect toleration of religious sentiment shall be secured." There is an omission there which does not exist as an omission in the Bill of Rights. The other is merely a protection of religious rights I think the section ought to remain

Mr. Knowles of Silver Bow As to perfect toleration of religious sentiment, I don't suppose that gentlemen wish to make a provision in the constitution that we are going to prohibit a person from coming here and by preaching advocate polygamy so long as they do not practice polygamy If it is just a sentiment advocated, when any sentiment is advocated here as a religion we are perfectly willing to hear them. Now, I don't think the practice of polygamy is a mode of worship at all. It is a barbarism I don't think it is a mode of religious worship. Now, there has been something said by the gentleman from Lewis & Clarke here that they should not be molested in personal property on account of their mode of religious worship. I think that is proper, and we ought to conform to the Enabling Act in this particular. I think the gentleman from Deer Lodge is mistaken as to what is the scope of this provision.

Mr. Parberry of Meagher: I move that this committee now rise.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Meagher, Mr. Parberry, and a vote being taken the same was declared lost.

The Chair then put the question on the motion of the gentleman from Park, Mr. Joy, to strike out Section 8, and a vote being taken the same was declared lost.

The Clerk read Section 9 as follows: "Ninth, That the people inhabiting said State of Montana do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof and to all lands lying within said limits owned or held by any Indian or Indian Tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States, that the lands belonging to the citizens of the United States residing within the said State of Montana shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the said State of Montana on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein contained shall preclude the said State of Montana from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or grant, save and except such lands as have been or may be granted to any Indian or Indians under any Act of Congress containing a provision exempting the lands thus granted from taxation, but said last named lands shall be exempt from taxation by said State of Montana so long and to such extent as such Act of Congress may prescribe."

There being no amendment to Section 9, the Clerk read Section 10, as follows: "Tenth, That the debts and liabilities of said Territory of Montana shall be assumed and paid by said State of Montana."

There being no amendment to Section 10, the Clerk read Section 11, as follows: "Eleventh, That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said State of Montana, and free from sectarian control."

There being no amendment to Section 11, the Clerk read Section 12, as follows: "Twelfth, That this ordinance shall be irrevocable without the consent of the United States and the people of said State of Montana."

Mr. Robinson of Deer Lodge: I desire to offer an additional section to be numbered Section 13.

The Chairman: The Chairman on the Committee on Ordinances offers a new section to be numbered Section 13, as follows: "Section 13. There shall be elected at the first general election to be held on the first Tuesday of October, 1889, by the qualified electors of each county in this State the following county and township officers: Three County Commissioners, one County Clerk, one Sheriff, one County Treasurer, one County Superintendent of Public Schools, one County Surveyor, one County Assessor, one Coroner, one Public Administrator, one County Attorney, two Justices of the Peace for each township, two Constables for each township, who shall enter upon the discharge of their duties on the first Monday of January succeeding such election, and shall hold their respective offices for the term of three years, and until their successors are elected and qualify, and all such officers thereafter elected shall hold their offices for the term provided in this constitution."

Mr. Robinson of Deer Lodge: I move the adoption of the section.

The motion was seconded.

Mr. Goddard of Yellowstone: I submit to the Chair and the committee that the section is out of order, for the reason that the matter has been provided for in the amendment to Section 6. This could not be construed as an amendment in any sense of the word, and if so it conflicts with that, and is therefore out of order.

Mr. Hershfield of Lewis & Clarke: I move that this committee rise and report progress and ask leave to sit again.

The motion was seconded

The Chair put the question on the motion of the gentleman from Lewis & Clarke, Mr. Hershfield, and a vote being taken the same was declared carried

---

IN CONVENTION

President Clark in the Chair

The convention was called to order.

Mr. Collins of Cascade: Mr. President, the Committee of the Whole have had under consideration Proposition No. 33, have considered same, report progress and ask leave to sit again.

The President: The Chairman of the Committee of the Whole reports that the committee have had under consideration Proposition No. 33, report progress and ask leave to sit again. If there be no objection the request will be granted.

Mr. Joy of Park I move that the convention now take a recess until two o'clock.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Park, Mr Joy, and a vote being taken the same was declared carried.

Tuesday, August 13th, 1889. Afternoon Session.

The convention was called to order by the President at 2 P. M.

The Clerk called the roll.

Mr. Myers of Yellowstone: I move the convention to go into Committee of the Whole for the further consideration of the General File.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Yellowstone, Mr. Myers, and a vote being taken the same was declared carried.

The President called Mr. Collins of Cascade to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Collins of Cascade in the Chair.

The committee was called to order.

The Chairman: The committee had under consideration a new section to be numbered Section 13 of Proposition No 33, on Ordinances, offered by the gentleman from Deer Lodge, Mr. Robinson.

The Clerk read the section as offered by the gentleman from Deer Lodge, Mr. Robinson, for the information of the members.

The Chairman: The question is upon the adoption of the section.

Mr Bickford of Missoula: I move the adoption of the section.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Missoula, Mr. Bickford, and a division being called for the same was declared carried by a vote of 33 in the affirmative to 27 in the negative.

Mr. Hogan of Silver Bow: I move that the committee do now rise and report Proposition No. 33 back to the convention, with the recommendation that it be adopted.

Mr. Dixon of Silver Bow: I desire to offer an amendment.

Mr. Hogan of Silver Bow: I withdraw the motion.

The Chairman: The gentleman from Silver Bow, Mr. Dixon, offers to amend Proposition No. 33, by inserting after the eleventh section the following, and number the succeeding sections to correspond. Twelfth, That on behalf of the people of Montana we in convention assembled do adopt the constitution of the United States.

Mr. Conrad of Choteau: I move the adoption of the section.

The motion was seconded.

Mr. Dixon of Silver Bow: I merely desire to say in reference to that that it is required by the Enabling Act that the convention do adopt the constitution. It was adopted by resolution in convention, but it in no way appears in the constitution, and I think that it ought to be in its proper place here. This is the reason why I offer the section.

The Chair put the question on the motion of the gentleman from Choteau, Mr. Conrad, on the adoption of the section, and a vote being taken the same was declared carried.

Mr. Hogan of Silver Bow: I now renew my motion that the committee rise and report back Proposition No. 33 to the convention, with the recommendation that it be adopted.

IN CONVENTION.

President Clark in the Chair.

The Chairman of the Committee of the Whole made the following report, which was read by the Clerk as follows:

"Mr. President: Your Committee of the Whole have had under consideration Proposition No. 33, General File No. 29, and beg leave to report the same back to the convention with the recommendations as amended it do pass.

"Your committee would further state that references herein made to sections and lines are such as are found in the printed bill.

"Amend Section 1 by striking out the word 'State' on line 1 and insert in lieu thereof the word 'Territory', and after the word 'October' on line 1 insert the words '1889'.

"Amend Section 2 by striking out the word 'State' on line 2 and insert in lieu thereof the word 'Territory'.

"Amend Section 4 by striking out on lines 3 and 4 the words 'or other equivalent words'.

"Amend Section 5 by striking out the word 'and' after the word 'Territory' on line 5 and insert the words 'who with'; also by striking out the words 'The Secretary, Auditor and Attorney General' on lines 5 and 6 and inserting in lieu thereof the words 'and the Chief Justice', also by inserting after the word 'on' on line 8 the words 'or before'; also by striking out on line 6 the words 'and the President of this convention'.

"Amend Section 6 by inserting after the word 'October' on line 1 the words '1889'; also by inserting before the word 'Superintendent' on line 3 the word 'State'; also by striking out all of said section after the words 'District Court' and insert in lieu thereof the words 'in and for each county of the State'.

"Add to Section 6 the following: All County and Precinct officers except Probate Judges who may be in office at the time of the adoption of this constitution shall hold their respective offices for the full time for which they may have been elected, and until such time as their successors may be elected and qualified, in accordance with the provisions of this constitution, and the laws now in force, and the official bonds of all such officers shall continue in full force and effect as though this constitution had not been adopted.

"Amend Section 7 by inserting after the word 'officers' on line 5 the words 'except County Treasurer'.

"Amend by adding as Section (13) thirteen as follows: Sec. 13. There shall be elected at the first general election to be held on the First Tuesday of October, 1889, by the qualified electors of each county Three (3) County Commissioners; one (1) County Clerk, one (1) Sheriff, one (1) County Treasurer; one (1) County Superintendent of Public Schools, one (1) County Surveyor; one (1) County Assessor; one (1) Coroner; one (1) Public Administrator; one (1) County Attorney; two (2) Justices of the Peace for each township; two (2) Constables for each township, who shall enter upon the discharge of their duties upon the First Monday of January succeeding such election, and shall hold their respective offices for the term of three years and until their successors are elected and qualified and all such officers thereafter elected shall hold their offices for the term provided in this constitution.

"Amend Proposition No. 33 by inserting after (11) eleventh section the following and numbering succeeding sections to correspond: Twelfth. That on behalf of the people of Montana, we, in convention assembled, do adopt the constitution of the United States.

"(Signed) T. E. COLLINS, Chairman."

Mr. Hartman of Gallatin: My attention was called by the Chairman of the Judiciary Committee to a little discrepancy here in the 12th section of the printed copy, and I have prepared an amendment here for the purpose of covering the case.

EDWARD CARDWELL
HIRAM KNOWLES C P. CONNOLLY, Stenographer
AARON C WITTER
CHARLES M WEBSTER WILLIAM MUTH
RICHARD O HICKMAN

The President: The Chair would suggest that the matter is now before the convention.

Mr Goddard of Yellowstone: I move that we consider Proposition No. 33.

Mr. Eaton of Park: I move to amend by asking unanimous consent, if that be necessary, for the consideration of Proposition No. 33.

The motion was seconded

The President: It is moved and seconded that the rules be suspended or that unanimous consent be obtained to consider Proposition No. 33.

The Chair put the question on the said motion of the gentleman from Park, Mr. Eaton, and a vote being taken the same was declared carried

The President: The convention will act first upon the amendments offered by the Committee of the Whole. The Clerk will read the amendments.

The Clerk read as follows "Amend Section 1 by striking out the word 'Territory'. and after the word 'October' on line 2 insert the words 'eighteen hundred and eighty-nine'."

Mr. Collins of Cascade: I move the adoption of the amendment.

The motion was seconded

The Chair put the question on the motion of the gentleman from Cascade, Mr Collins, and a vote being taken, the same was declared carried.

The Clerk read as follows: "Amend Section 2 by striking out the word 'State' on line 2 and insert in lieu thereof the word 'Territory'."

Mr. Witter of Beaverhead: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Beaverhead, Mr. Witter, and a vote being taken, the same was declared carried.

The Clerk read as follows· "Amend Section 4 by striking out on lines 3 and 4 the words 'or other equivalent words'."

Mr. Witter of Beaverhead I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion of the gentleman from Beaverhead, Mr. Witter, and a vote being taken, the same was declared carried.

The Clerk read as follows: "Amend Section 5 by striking out the word 'and' after the word 'Territory' on line 5 and insert the words 'who with': also by striking out the words 'The Secretary. Auditor and Attorney General' on lines 5 and 6, and inserting in lieu thereof the words 'and the Chief Justice', also by inserting after the word 'on' on line 8 the words 'or before'; also by striking out on line 6 the words 'and the President of this convention'."

Mr. Chessman of Lewis & Clarke· I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

Mr. Hickman of Madison I think there is a conflict in that. In the first part of the fifth paragraph it states not later than fifteen days after said election, and then later on it says thirty days.

Mr Maginnis of Lewis & Clarke. I call the attention of the gentleman to the fact that that is the difference betweeen the county and the territorial canvass.

Mr. Hickman of Madison. I stand corrected.

The Chair put the question on the said motion of the gentleman from Lewis & Clarke. Mr. Chessman, and a vote being taken the same was declared carried.

The Clerk read as follows: "Amend Section 6 by inserting after the word 'October' on line 1 the words 'eighteen hundred and eighty-nine'; also by inserting before the word 'Superintendent' on line 3 the word 'State'; also by striking out all of said section after the words 'District Court' and inserting in lieu thereof the words 'in and for each county of the State'."

Mr. Collins of Cascade: I move the adoption of these amendments.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Cascade, Mr. Collins, and a vote being taken, the same was declared carried.

The Clerk read as follows: "Add to Section 6 the following: All county and precinct officers except Probate Judges who may be in office at the time of the adoption of this constitution shall hold their respective offices for the full time for which they may have been elected, and until such time as their successors may be elected and qualified, in accordance with the provisions of this constitution, and the laws now in force, and the official bonds of all such officers shall continue in full force and effect as though this constitution had not been adopted."

Mr. Goddard of Yellowstone: I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

Mr. Goddard of Yellowstone: I call for the ayes and nays.

Mr. Hogan of Silver Bow: Before the ayes and nays are called I would like to have a ruling by the Chair on Rule 17 of the Rules of the Convention. (Reading) "Every member shall be present before the vote is declared from the Chair, and no other person shall vote for or against the same unless the convention shall excuse him, or unless he is immediately interested in the question, in which case he shall not vote." Now, as to the last part of that rule, I claim there are parties here who are directly interested in this question, such as county attorneys and county clerks.

The President: If there are any members of the convention that are pecuniarily interested in the question directly, it would seem that this rule would exclude them from voting.

Mr. Hogan of Silver Bow: I would state to the convention that my object for raising this is that there are some county attorneys here who are delegates, and I claim that they are directly interested in the question, and according to the rule 17 they have no right to vote upon the proposition. I call for a ruling on that question.

Mr. Burleigh of Custer: I would state that I happen to be one of the distinguished gentlemen who were elected by the suffrage of the people as County Attorney, and also that I was elected by democratic votes. If it had not been for democratic votes I would not have been elected, for I was scratched by my party about 65 votes, and I received three democratic votes to one republican vote. Now, we had a vote up a few days ago upon the mining proposition, and there were mining men who, like my illustrious friend, got up and voted, and there was no question raised as to their right to vote by me, or any other member of the convention. I would scorn anything of that kind. Suppose there was a gentleman who happened to be interested in a lead mine, or a silver mine, or any other mine, it would simply preclude him from voting. This matter seems to be beneath the dignity of a statesman, beneath the dignity of a gentleman, If it is necessary for me to resign my position in order to vote, I am ready to do so; it has been nothing but a detriment to me. I raise the question, not because it is a matter of interest, but because it is a right of the people.

Mr. Hogan of Silver Bow: I have no interest in the matter at all, except I know the convention has adopted this rule. Now, I would say further that I think it is below the dignity of a gentleman to trespass upon this rule as it is for the gentleman to raise this point.

The President: The question is upon the adoption of the amendment. If there be no objection, the ayes and nays will be entered on the journal. Any pairs will be announced before the roll call begins.

Mr. Parberry of Meagher: I would like to state that I am paired with Mr. Haskell.

Mr. Burleigh of Custer: I would like to say inasmuch as an allusion was made to county attorneys that I happened to be elected the County Attorney in Custer County at the last election, and I am about the only Republican who was elected. I do not claim it was on account of my transcendent merit as a Republican, but simply because I stood there before the people, I suppose. I showed the people of the county that I was with them in their feelings. The Sheriff of the county, Mr. Irwin, was elected there for the full term. The County Clerk, Mr. Deer, was elected, and he is a full fledged Democrat from Virginia. Mr. Thompson of Illinois was elected Treasurer. I believe that when those men went into that election and put up the quid pro quo to pay the necessary expenses of the campaign, that they were entitled to the consideration of their party. I do not stand here to claim any superior advantages for the Republican party, but I claim that these men who were elected are entitled to serve out their terms. There may be others who will stand under their party lash, but I never bite on any such bait. When I come in good faith here and pledge myself to stand by the friends who stood by me, I will do it or die in the attempt. Mr Irwin went in there as Sheriff and he fought the battle manfully. As you all know in this county he is one of the best officers that are—(Interrupted).

The President: The gentleman understands he is speaking by indulgence.

Mr. Burleigh of Custer: Yes sir; I understand that. If any man wants to object I will sit down; I do not ask any privileges—Mr. Deer is one of the best officers we have in this western country, and I told him I believed it was right, and I believe it is right now, that no one who has ever gone out and got his nomination or his election by the indulgences of those people has a right to go back upon them and take an opposite position. I do not say that any man has done it, but if I had ever done it, it is the last thing I would have done I believe those men are entitled to serve out their full term of office

Mr. Maginnis of Lewis & Clarke· Does the gentleman's remark have reference to the delegate to Congress, Thomas H. Carter,

Mr. Burleigh of Custer: I don't care about Mr. Carter; he is a man of your own choice; you can keep him. Now, these men that went into the fight, they did it manfully, not on account of their party, but their transcendent honesty and their integrity, and their sense of duty, and I will oppose any election in our county this Fall. I want to put myself upon record and stand upon my record.

The Clerk called the roll on the adoption of the amendment.

The vote stood as follows:

Ayes: Bullard, Burleigh, Burns, A J.; Callaway, Carpenter, Cauby, Chessman, Craven, Eaton, Gillette, Goddard, Hammond, Hartman, Hobson, Hershfield, Hickman, Joy, Kennedy, Knippenberg, Knowles, Kohrs, Loud, Luce, Marshall, Mitchell, Reek, Rotwitt, Watson, Whitehill, Witter—30.

Nays: Bickford, Brazleton, Breen, Browne, Buford, Burns, A. F.; Cardwell, Collins, Conrad, Cooper, Courtney, Dixon, Durfee, Fields, Gibson, Hatch, Hogan, Joyes, Kanouse, Maginnis, Marrion, Mayger, McAdow, Middleton, Muth, Myers, Ramsdell, Robinson, Schmidt, Stapleton, Toole, J. R.; Winston, Mr. President—33.

Absent: Burns, E.; Gaylord, Rickards, Webster—4.

Paired: Aiken and Sargent, Dyer and Graves, Haskell and Parberry, Jos. K Toole and Warren—8.

The Chair announced the vote and declared the motion to amend lost.

Mr. Collins of Cascade: I move to reconsider the vote by which that motion to amend was lost; and I move to lay that motion on the table.

The motion was seconded.

Mr. Burleigh of Custer: I move the call of the House.

The motion was seconded.

The President. The motion to reconsider is a privileged question; unless there is evidence of an absence of a quorum.

Mr. Maginnis of Lewis & Clarke· Mr. President, I rise to a point of order, that the roll call shows a quorum present

The President: The question is to reconsider the motion by which the Goddard resolution was lost, and the motion to lay it upon the table. The first question is upon the motion to lay on the table

Mr. Hartman of Gallatin: I call for the ayes and nays.

The President· If there be no objection the ayes and nays will be entered on the journal. The Clerk will call the roll.

The Clerk called the roll.

The vote stood as follows·

Ayes· Bickford, Brazleton, Breen Browne, Buford, Burns, A. F., Cardwell, Collins, Conrad, Cooper, Courtney, Dixon, Durfee, Fields, Gibson, Hatch, Hogan, Joyes, Kanouse, Maginnis, Marrion, Mayger, McAdow, Middleton, Muth, Myers, Ramsdell, Robinson, Schmidt, Stapleton, Toole, J. R.; Winston, Mr. President—33.

Nays: Bullard, Burleigh, Burns, A. J ; Callaway, Carpenter, Cauby, Chessman, Craven, Eaton, Gillette, Goddard, Hammond, Hartman, Hershfield, Hickman, Hobson, Joy, Kennedy, Knippenberg, Knowles, Kohrs, Loud, Luce, Marshall, Mitchell, Ramsdell, Reek, Rotwitt, Watson, Whitehill, Witter—30

Absent. Burns, E.: Gaylord, Rickards, Webster—4.

Paired: Aiken and Sargent, Dyer and Graves, Haskell and Parberry, Jos. K. Toole and Warren—8.

The Chair announced the vote, and declared the motion to lay on the table and the motion to reconsider the vote by which the amendment was lost, carried.

The President: The Clerk will read the other amendments.

The Clerk read as follows: "Amend Section 7 by inserting after the word "officers" on line 5 the words "except County Treasurers."

Mr. Knowles of Silver Bow sent up an amendment.

The President. The gentleman from Silver Bow offers an amendment as follows: "Except County Treasurer who shall enter upon the duties of his office on the first Monday in March after his election."

Mr. Knowles of Silver Bow: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Knowles, and a vote being taken the same was declared carried.

The Chair then put the question on the amendment reported by the committee to Section 7, and a vote being taken, the same was declared carried.

The Clerk read as follows: "Amend by adding as Section (13) thirteen as follows: Sec. 13. There shall be elected at the first general election to be held on the first Tuesday of October, 1889, by the qualified electors of each county in this State the following county and township officers: Three (3) County Commissioners; one (1) County Clerk, one (1) Sheriff, one (1 County Treasurer; one (1) County Superintendent of Public Schools; one (1) County Surveyor; one (1) County Assessor; one (1) Coroner; one (1) Public Administrator; one (1) County Attorney; two (2) Justices of the Peace for each township, two (2) Constables for each township, who shall enter upon the discharge of their duties on the first Monday of January succeeding such election, and shall hold their respective offices for the term of three years and until their successors are elected and qualified, and all such officers thereafter elected shall hold their offices for the time provided in this constitution."

Mr. Burleigh of Custer: Mr. President, if I understand aright, it provides for the election of one coroner.

The President: Yes sir.

Mr. Burleigh of Custer: I will move an amendment that two coroners be elected, for it will take at least two to hold an inquest over the bodies of their friends before they get through with this.

Mr. Bickford of Missoula: If I understand it, it makes no provision for the County Treasurer taking his office on the first of March. If there is no amendment, I would like to offer one.

Mr. Maginnis of Lewis & Clarke: I understood from Judge Knowles that the general law provided for that.

Mr. Bickford of Missoula: I offer the following.

The President: The gentleman from Missoula, Mr. Bickford, offers to amend by adding, "except as herein otherwise provided."

Mr. Bickford of Missoula: Mr. President, I have placed the word "and" at the commencement of that. It should be inserted in the substitute or additional section offered by the gentleman from Deer Lodge.

The President: It would come in probably as the Chair understands after these words "who shall enter upon the discharge of his duties on the first Monday of January except as herein otherwise provided."

The motion of the amendment of the gentleman from Missoula was seconded.

Mr. Luce of Gallatin: Is an amendment in order?

The President: Not until this is disposed of, unless by consent.

Mr Luce of Gallatin: I propose to strike out that provision relating to the time when they shall take their office, to be then covered by Section 7 above, or the Seventh Ordinance. It need not be repeated. I understand the section is offered by Mr. Robinson to leave out this section entirely.

The President: The question is upon the adoption of the amendment offered by Mr. Bickford of Missoula.

The Chair put the question on the adoption of the amendment offered by the gentleman from Missoula, and a vote being taken the same was declared carried

Mr. Collins of Cascade: I move the adoption of the section as amended.

The motion was seconded.

Mr. Hartman of Gallatin: I should like to offer a substitute here to meet the objections that were raised by Mr. Dixon. It is the 12th section of the printed copy.

The President: That will not be entertained at present until we have disposed of this question.

The Clerk read the section as amended for the information of the convention.

Mr. Witter of Beaverhead. I move to amend by striking out the word "three" and insert "one" in lieu thereof.

The motion was seconded.

The Chair stated the question.

Mr Witter of Beaverhead: I call for the ayes and nays. I see that there is a conflict in this section with other parts of the constitution that have been adopted, and I think it would be better that the officers only hold for one year, because it would be satisfactory and in accordance with the other part Other sections should not conflict with this.

The President: The question now is upon the adoption of the amendment offered by the gentleman from Beaverhead. If there be no objections, the ayes and nays will be entered on the journal.

Mr. Collins of Cascade Before the roll is called, I would like to call attention to the fact that pairs would not count on this proposition. It is entirely outside of the main question, and has no reference to it whatever.

Mr. Burleigh of Custer I don't think pairs should count on any proposition here We went into this election a year ago, and agreed to elect these men for two years, and they went in and made their stake, and they were elected, and the idea of coming up in this convention and ruling them out, and saying that because we have got into convention they shall not hold office any longer, I think it is one of the lowest things that was ever known among honorable men I think that as we have the right by ordinance to come in here and provide that these men shall hold over through their full term of office, that it should go in there. and it is no detriment to the state that these men should be entitled to hold their office in good faith. Now, as I said before, in Custer County, I believe I am the only Republican elected there, and I was elected not on account of the peculiar partiality of my party to me, for I don't think they ever had any more partiality towards me than the balance of the people; I was elected there for this purpose, and I never made any pledges either. But I do think it is one of the greatest breaches of implied faith in the world These men went in and defrayed their expenses; they are honorable men, they are our best men; and I think those men should be entitled to hold out their terms of office in bringing it around to the regular election next year, when the wheels of government will roll around without any friction at all, and I think they should be allowed to hold their offices for the full terms. It will injure nobody; it will do the public a great deal of good. we want to try them through the full term of their probation, and if they make good officers re-elect them. Now, I am one of these men who happen to be a little peculiar in this thing I don't think because a mass of men have put a Democratic brand on him that he is to be ostracised by the Republican party. I believe in taking him on his merit Whether he has been a Democrat raised in Kentucky or Virginia, if he is a good faithful man, I believe in electing him, and I will never come in here to ostracise these men, and to chop off short the chicken's head here simply because it runs over the chopping block at this time when we have a chance to do it, and reorganize either the Republican or Democratic party.

Mr. Witter of Beaverhead: To prevent any further discussion I will withdraw my motion

Mr Hogan of Silver Bow: I move the previous question.

The President The motion is withdrawn

Mr. Luce of Gallatin: I want to call the attention of the convention to Proposition No 24, Section 11, as printed and as amended it pass. It was passed on the sixth day of August and as it was passed it reads as follows: "There shall be elected in each county the following officers: One County Clerk, who shall be Clerk of the Board of County Commissioners, and ex-officio recorder of deeds, one Sheriff; one Treasurer, who shall be collector of taxes; one County Superintendent of Schools; one

County Surveyor; one Assessor; one Coroner; one Public Administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of two years; except that the county officers elected at the first general election provided for by this constitution shall hold their offices until the general election in 1892, and until their successors are elected and qualified." Now, that is all I care to read of it. The balance of this section refers to vacancies in office. This proposition now before the convention is in the very teeth of this that has been passed. There seems to me there is no way out of this, except extending the county officers already in office one year. Then the terms will commence regularly as already provided in this constitution. We have without exception said that the terms of these officers shall be for two years. Now, then, we say in another part of the constitution that the first shall be for three years or one year. I don't understand that this section here that is already passed can be amended in this manner by an ordinance, and I think the section proposed by the gentleman from Deer Lodge certainly is out of order and ought not to be considered.

Mr. Middleton of Custer: We have listened to a considerable degree of buncombe here. It is undoubtedly apparent to the convention what is the source and the purpose and all I desire to say in reply to that is that the people of some of these counties have discovered that last Fall in making their selections they made a mistake and they are desirous now of rectifying that mistake, and so far as I am concerned I have no fear to go home and face my people and abide by any action of mine in this convention. I move the previous question on the amendment of the proposition.

The motion was seconded.

The President: The question now before the convention is, shall the main question be now put. There are no amendments The main question is the adoption of the proposition as offered by the gentleman from Deer Lodge.

Mr. Kanouse of Meagher: I have an amendment that I desire to offer at the proper time to one of the paragraphs of this proposition, and I hope that so far as the main proposition is concerned, the amendment will simply not prevail.

Mr. Middleton of Custer: I mean simply on this subdivision of it.

The President: The previous question when ordered can only operate on any question that is pending before the convention; and if there has been any motion to adopt the proposition it would not affect it.

Mr. Loud of Custer called for the ayes and nays.

Mr. Fields of Park objected.

The Chair put the question on the motion for the call of the ayes and nays, and there being a sufficient number, the Clerk was instructed to call the roll.

The Clerk called the roll.

The vote stood as follows:

Ayes: Bickford, Brazleton, Breen, Browne, Buford, Burns, A. F.; Cardwell, Collins, Conrad, Cooper, Courtney, Dixon, Durfee, Fields, Gibson, Hatch, Hogan, Kanouse, Maginnis, Marrion, Mayger, Middleton, Muth, Myers, Ramsdell, Robinson, Schmidt, Stapleton, Toole, J. R.; Mr. President—30.

Nays: Burleigh, Burns, A. J.; Callaway, Carpenter, Cauby, Chessman, Craven, Eaton, Gillette, Goddard, Hammond, Hartman, Hershfield, Hickman, Hobson, Kennedy, Knippenberg, Knowles, Kohrs, Loud, Joy, Luce, Marshall, McAdow, Mitchell, Reek, Rotwitt, Watson, Witter—29.

Absent: Burns, E.; Gaylord, Rickards, Webster—4.

Paired: Aiken and Sargent; Bullard and Joyes; Dyer and Graves; Haskell and Parberry, Jos. K. Toole and Warren, Whitehill and Winston—12.

The Chair announced the vote and declared the motion of the previous question carried.

The President: The question now is on the adoption of the amendment; the ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Bickford, Brazleton, Breen, Browne, Buford, Burns, A. F., Cardwell, Collins, Conrad, Cooper, Courtney, Dixon, Durfee, Fields, Gibson, Hatch, Hogan, Kanouse, Maginnis, Marrion, Mayger, McAdow, Middleton, Muth, Myers, Ramsdell, Robinson, Schmidt, Stapleton, Toole, J. R.; Mr. President—31.

Nays Burleigh, Burns, A J., Callaway, Carpenter, Cauby, Chessman, Craven, Eaton, Gillette, Goddard, Hammond, Hartman, Hershfield, Hickman, Hobson, Joy, Kennedy, Knippenberg, Knowles, Kohrs, Loud, Luce, Marshall, Mitchell, Reek, Rotwitt, Watson, Witter—28.

Absent: Burns, E., Gaylord, Rickards, Webster—4.

Paired· Aiken and Sargent, Bullard and Joyes, Graves and Dyer, Haskell and Parberry, Jos. K. Toole and Warren, Whitehill and Winston—12.

The Chair announced the vote and declared the motion to adopt the section offered by the gentleman from Deer Lodge carried.

Mr. Hartman of Gallatin sent up an amendment.

The President: The gentleman from Silver Bow, Mr. Dixon, offered an amendment which has not been acted upon. The Clerk will read the same.

The Clerk read as follows: "Amend Proposition No. 33 by inserting after the eleventh section the following, and number the succeeding paragraphs to correspond. Section 12. That on behalf of the people of Montana, we, in convention assembled, do adopt the constitution of the United States."

Mr. Courtney of Silver Bow: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Courtney, and a vote being taken the same was declared carried.

The President: The Clerk will read the amendment offered by the gentleman from Gallatin, Mr Hartman.

The Clerk read as follows. Amend the Twelfth ordinance in printed copy to read as follows "Thirteenth That Ordinances No. 8, 9, 10, 11, 12 and 13 herein shall be irrevocable with the consent of the United States and the said people of the State of Montana." Renumber subsequent sections to correspond

Mr Maginnis of Lewis and Clarke: I would suggest to the gentleman from Gallatin that all that portion of the article which forms a contract with the United States should go by itself, and that this section which we have now adopted should go in "State Affairs".

Mr Hartman of Gallatin: I will just simply state what the purpose of this was. We only want to make such portions of these ordinances as are of a contract with the United States government, compelled to be inserted here by the Enabling Act. irrevocable Portions of them we don't want to make irrevocable. This is to read that the 8th, 9th, 10th, 11th, 12th and 13th sections shall be irrevocable, and the section 12th is numbered 13. With reference to the renumbering of them, as suggested by Mr. Maginnis, I believe the Committee on Phraseology and Revision should have the right to renumber or rearrange Major Maginnis has suggested that the last section just adopted should follow Section 7. but I think the committee would have authority to insert it in that order and renumber accordingly I hope it will pass, for then it makes those irrevocable that are provided for by the Enabling Act, and none others.

The Chair put the question on the amendment offered by the gentleman from Gallatin, Mr. Hartman, and a vote being taken, the same was declared carried.

Mr Kanouse of Meagher sent up an amendment.

The Clerk read the said amendment as follows· Paragraph 11: Insert in lieu of the word "systems" the words "a uniform system".

The amendment was seconded.

The Chair stated the amendment

Mr Kanouse of Meagher: A reference to Proposition to No 17 will reveal the fact that we have already adopted almost a duplicate of the eleventh paragraph in the proposition now under consideration. I believe that it is desirable that the constitution should be complete as to all of the ideas that it is desired to incorporate, and I believe further with the ideas of the gentleman from Gallatin when attention was called to the fact that some portion of Paragraph 8 here had perhaps been adopted, that it would be the best and safest course for this convention to assume to follow as nearly as might be the positive requirements of the Enabling Act, and I therefor voted in favor of the motion to retain intact all of the language in the paragraphs of this proposition. But I find, however, that Section 1, on the Article on Education, goes perhaps a little further than the paragraph in this instance, and if it is in the power of the committee appointed the other day, where duplicate provisions are found, to either strike one out or recommend to the convention that it be done, I think that for the purpose of making this ordinance as complete as possible, and with the other provision which will be a duplicate of it stricken out, I think this amendment ought to be made. I don't think it is proper, or perhaps the sense of this convention, that there should be more than one system of common schools, or of public schools, and the error, if error it be, has crept in from following too closely the exact language of the Enabling Act of Congress in this respect. I think it was not the intention that the different sects should all be provided for by different systems but that the word "systems" there used referred to the different States, but that in the State the system should be uniform and complete, and should not be "systems", but should be one and uniform throughout the State.

The Chair put the question on the amendment of the gentleman from Meagher, Mr. Kanouse, and a division being called for the same was declared carried by a vote of 26 in the affirmative to 21 in the negative

Mr. Dixon of Silver Bow: I move to reconsider the vote by which that amendment was adopted. I desire to state that it seems to be very important to adhere closely to what Congress says. We have in here just exactly what Congress requires, and I am decidedly in favor of this matter of following the language and the exact words of the Act of Congress

The motion was seconded.

The Chair put the question on the motion of the gentleman from Silver Bow, Mr. Dixon, and a vote being taken, the same was declared carried.

The President: The question now is upon the adoption of the amendment.

Mr. Collins of Cascade: I hope that the amendment will carry. This section in the Enabling Act certainly had reference to the Territory of Washington, the two Territories of Dakota, and the Territory of Montana, and the language of the Congressional Act takes the plural, according to my notion of it. Now, I don't believe there is a man in this convention that wants to have more than one system of public schools in the State of Montana, and I believe the amendment of the gentleman from Meagher is correct, and in the line of the Enabling Act of Congress It seems to me that if we do anything else we will be stultifying ourselves. There is not a member on the floor of this convention who is in favor of more than one system of public schools.

Mr. Kanouse of Meagher: I believe, sir, that no gentleman here who will carefully compare Section 1 of Proposition No. 17 with paragraph 11 of this proposition under consideration, and then will take into consideration the language used in the Enabling Act, but who will say that the position which I take upon this matter is correct. I think, sir that the gentleman from Silver Bow, who moved the reconsideration of this matter, will hardly say that the establishment of a uniform system of public schools, which shall be open to all the children of the State of Montana, and free from sectarian control, would not be a full and complete compliance with the Act of Congress, where they say that provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of the State. It seems superfluous to say anything more on the subject. All has been said that it is necessary to say. It is only a play of words.

Mr. Carpenter of Lewis & Clarke: It seems to be that the interpretation given to this section by the gentleman from Meagher is correct. This is a case where if you follow the law you disregard the meaning entirely The "system" covers everything—covers "systems"—everything that can be done in reference to schools. All Congress asks is that each State shall establish a system, and when they use the language in reference to the four States they say "systems", but it really only refers to one system.

The Chair put the question on the adoption of the amendment offered by the gentleman from Meagher, Mr. Kanouse, and a division being called for the same was declared carried by a vote of 33 in the affirmative to 19 in the negative.

The President There is an amendment offered by Mr. Loud of Custer, which the Clerk will read.

The Clerk read as follows: "Amend Ordinance No. 7 by striking out the words "law for territorial officers" and insert in lieu thereof the words "Ordinance No 5."

Mr. Burleigh of Custer: I move the adoption of the amendment.

The motion was seconded

Mr. Maginnis of Lewis & Clarke: I rise to a point of order. It cannot be reached It is the ordinance upon which the vote was taken, and the reconsideration of it was laid on the table

The President: It does not apply, as the Chair understands, to the section stated by Major Maginnis

Mr. Loud of Custer: If Ordinance No 7 remains as it now is we will have two canvassing boards. We will have one composed of the Secretary of the Territory and the Governor and Chief Justice, and in Ordinance No. 7, we have the original territorial canvassing board; and it would be necessary for the County Clerks in different counties to transmit two copies of all the returns in the different counties, one to the board which we have agreed to today and one to the original territorial board

Mr. Robinson of Deer Lodge For the same reasons offered by the gentleman, I withdraw the amendment to Section 7, in order to straighten that matter out, so as to avoid having two canvassing boards.

Mr. Loud of Custer I will accept that amendment.

The Clerk read the amendment as follows: "Amend Section 7 by inserting after the word "votes" in line 4 the words "for State officers, canvassed in the same manner as provided in Section 5 herein; and the votes for county and township officers shall be canvassed in the same manner as by law provided for county and township officers"; and the words "canvassed in the same manner as provided by law for territorial officers" stricken out

Mr. Robinson of Deer Lodge: I will state to the convention that that will make the section provide for the canvassing of all the State officers in the same manner as canvassing for the ratification of the constitution, and that it will leave all county and township officers just the same as the law leaves it—the same canvassing board, as the law now leaves it.

Mr Maginnis of Lewis & Clarke I would call the attention of the gentleman to the fact that the canvassing board as it now stands consists of gentlemen of both political parties, and if the amendment is carried it will be all of one party, which is not the way to constitute a canvassing board.

Mr Loud of Custer: I had no intention of making political question of these things, but I look at it in this light, that as long as all of these different officers will all be on the same ticket, it seems to me to be necessary that they should be canvassed by the same board.

Mr. Hickman of Madison: I agree with the gentleman from Lewis & Clarke, that they ought not to be of the one party. I know we felt like objecting very forcibly when the apportionment of this Territory was made by one board

The Clerk read the amendment for the information of the convention.

The President: The question is upon the adoption of the amendment. The Clerk will read the section as it will be, if amended.

The Clerk read as follows. "7th. That notice of such election for State, county and township officers shall be given by the several counties or county commissioners in the same manner as notices of general elections for delegates to Congress and county officers under the now existing laws of the Territory and such election shall be conducted and held, and the votes for said officers canvassed in the same manner as provided in Section 5 herein, and the votes for county and township officers shall be canvassed in the same manner as by law provided for county and township officers, and all State, county and township officers, except county treasurers, shall qualify and enter upon the discharge of their duties as such on the first Monday of January following such election, except county treasurer, who shall enter upon the duties of his office on the first Monday in March after such election."

The President: That is the way the section will read as amended in Committee of the Whole and in convention, if the amendment is carried.

Mr. Hogan of Silver Bow: For information I would ask the Clerk to read Section 5.

The Clerk read Section 5 as follows: "Fifth, The votes cast at said election for the adoption or rejection of said constitution shall be canvassed not later than fifteen days after said election, or sooner, if the returns from all of the precincts shall have been received, and in the manner prescribed by the laws of the Territory for Montana for canvassing the votes at general elections in said Territory; and the returns of said election shall be made to the Secretary of the Territory, who, with the Governor and the Chief Justice of the Territory, or a majority of them, shall constitute a Board of Canvassers, who shall meet at the office of the Secretary of the Territory on or before the thirtieth day after the election and canvass the votes so cast and declare the result.

The section as read by the Clerk is with the amendments in Committee of the Whole which have been adopted.

Mr. Luce of Gallatin: The amendment here refers to Section 5. I suppose it should be "Ordinance 5".

The President: Yes sir.

The Chair put the question on the adoption of the amendment as read by the Clerk, and a vote being taken, the same was declared carried.

Mr. Collins of Cascade: I move the adoption of the proposition as amended.

The motion was seconded.

The President: It is moved and seconded that the proposition as amended be adopted and placed upon its final passage.

Mr. Knowles of Silver Bow: There are several matters on which I would like to ask information in reference to this proposition. Is there any place provided in this ordinance as amended which states when these State officers are to take their offices?

Mr. Maginnis of Lewis & Clarke: That is in the Executive department.

Mr. Knowles of Silver Bow: Does that provide when?

Mr. Maginnis of Lewis & Clarke: The first Monday in January after the election. (Reading) "Except that the term of office of those who are elected at the first election shall begin when the State shall be admitted into the Union," &c.

Mr. Knowles of Silver Bow: Then, the district officers. Now, these judges are all district judges. If they take office only on the first of January, we may be admitted into the Union on the first of December, and then we would be without courts for a month. There ought to be some provision made. Really, I feel as though this whole thing ought to be committed to a committee and remodeled, and still I think we can cure it.

The President: The ayes and nays will be entered on the journal on the adoption of the proposition.

The Clerk called the roll.

The vote stood as follows:

Ayes: Bickford, Brazleton, Breen, Browne, Buford, Burns, A. F.; Callaway, Cardwell, Collins, Conrad, Cooper, Courtney, Dixon, Durfee, Fields, Gibson, Hatch, Hogan, Kanouse, Kennedy, Maginnis, Marrion, Mayger, McAdow, Middleton, Muth, Myers, Ramsdell, Robinson, Schmidt, Stapleton, Toole, J. R.; Warren, Winston, Mr. President—34.

Nays: Burleigh, Burns, A. J.; Carpenter, Cauby, Chessman, Craven, Eaton, Gillette, Goddard, Hammond, Hartman, Hershfield, Hickman, Hobson, Joy, Knippenberg, Knowles, Kohrs, Loud, Luce, Marshall, Mitchell, Reek, Robinson, Watson, Whitehill, Witter—27.

Absent: E. Burns, Gaylord, Rickards, Webster—4.

Paired: Aiken and Sargent, Bullard and Joyes, Graves and Dyer, Haskell and Parberry, Jos. K. Toole and Warren—10.

The Chair announced the vote and declared the motion to adopt Proposition No. 33 carried.

The President: The proposition will be engrossed and enrolled and referred to the Committee on Revision and Phraseology.

Mr. Collins of Cascade: I move to reconsider the vote by which Proposition No. 33 was carried, and move to lay that motion on the table.

The motion was seconded.

The Chair stated the motion.

Mr. Robinson of Deer Lodge: I desire to be excused from the convention for the day. I feel indisposed.

The Chair put the question on the motion of the gentleman from Cascade, Mr. Collins, and a division being called, the same was declared carried by a vote of 31 in the affirmative to 26 in the negative.

Mr. Burleigh of Custer: I move that we take a recess until eight o'clock.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Custer, Mr. Burleigh, and a vote being taken, the same was declared lost.

Mr Collins of Cascade: I move the convention resolve itself into Committee of the Whole for the consideration of the general file.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Cascade, Mr. Collins, and a vote being taken, the same was declared carried.

The President called Mr. Middleton of Custer to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Middleton of Custer in the Chair.

The committee was called to order.

Mr. Eaton of Park: I move that the committee proceed to the consideration of Proposition No. 36, Article on Public Indebtedness.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Park, Mr. Eaton, and a vote being taken, the same was declared carried.

The Chairman The Clerk will read Section 1 of Proposition No. 36.

The Clerk read as follows: "Section 1. Neither the State or any county, city, town, municipality nor other subdivision of the State shall ever give or loan its credit in aid of, or may any donation or grant, by subsidy or otherwise, to any individual association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the State by operation or provision of law."

Mr. Luce of Gallatin: I move to strike out the word "or" in line 1. There is a little mixture of the disjunctive conjunction.

The motion was seconded.

The Chair stated the motion.

Mr. Hershfield of Lewis & Clarke. I wish the gentleman from Gallatin would state the reason for striking that out

Mr. Luce of Gallatin: It strikes me it is not grammatical.

The Chair put the question on the motion of the gentleman from Gallatin, Mr. Luce, and a vote being taken the same was declared carried.

There being no further amendments to Section 1 the Clerk read Section 2 as follows: "Sec. 2. The Legislative Assembly shall not in any manner create any debt, except by a law which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on and extinguish the principal of such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which shall singly or in the aggregate with any existing debt or liability exceed the sum of one hundred thousand dollars ($100,000), except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election."

There being no amendment to Section 2, the Clerk read Section 3 as follows: "Sec. 3. All moneys borrowed by or on behalf of the State shall be used only for the purpose specified in the law authorizing the loan."

There being no amendment to Section 3, the Clerk read Section 4 as follows· "Sec. 4. The State shall not assume the debt, or any part thereof, of any county, city, town or municipal corporation."

Mr. Warren of Silver Bow: I move that in connection with Section 4, the proposition of the gentleman from Custer, Mr. Burleigh, be read and disposed of.

The motion was seconded.

Mr. Collins of Cascade: I would state that the matter was reported upon adversely and not put upon the general file at all.

Mr. Warren of Silver Bow: Very well, I withdraw my motion.

There being no amendment to Section 4, the Clerk read Section 5 as follows: "Sec. 5. No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five (5) per centum of the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county shall be void. No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars ($10,000), without the approval of a majority of the electors thereof, voting at an election to be held for that purpose."

Mr. Browne of Choteau: I move to strike out all after the word "void" on line 5 of Section 5.

The motion was seconded.

The Chair stated the motion.

Mr. Hershfield of Lewis & Clarke: This matter was discussed fully in committee, and they have thoroughly investigated the propriety of this proposition, and they have unanimously reported the same to the convention. It is a matter which is worth considerable attention on the part of the committee, and it seems to me that some limitation ought to exist in the constitution whereby it would prevent counties from incurring burdensome indebtedness. Now, I think it is right and proper that this should remain—a limitation of this kind—and I trust the committee will so concur.

Mr. Knowles of Silver Bow: I don't see how you are going to provide for the ordinary running expenses of a county if you cannot run in debt Suppose you have a criminal to prosecute.

Mr. Hershfield of Lewis & Clarke. This is for one solitary and single appropriation.

Mr. Knowles of Silver Bow: You say that "no county shall be allowed to become indebted in any manner or for any purpose to an amount, including the existing indebtedness in the aggregate exceeding five per centum of the value of the taxable property therein." Now, if you have got up to five per cent and here comes on a term of court and a dozen criminal cases to be prosecuted, they could not incur an expense for that purpose.

Mr. Hershfield of Lewis & Clarke: I am sorry I have to disagree with the gentleman on this proposition. The last clause provides that it limits the county on any single indebtedness to $10,000. They cannot incur any one single indebtedness at the time for any single purpose in excess of $10,000. Now, if you go on and incur indebtedness for courts, it comes under the head of numerous items—jurors, witnesses and other expenses They cannot incur any indebtedness for fuel exceeding $10,000, or they cannot buy illuminating oil to amount to more than $10,000.

Mr. Knowles of Silver Bow: If you make that interpretation of it, why, you make a pretty good indebtedness when divided up in that way.

Mr. Kennedy of Missoula: My reason for seconding the amendment of the gentleman from Choteau to strike out all words in the section after the word "void" is just this. We have in the county of Missoula very many places to bridge, and we will in the future probably have to build bridges that will cost $15,000 to $20,000. It is the proposition of the present Board of County Commissioners that if they should ever have to build any bridges across main streams in the future that they will put in stone abutments and iron bridges, which will cost about double what ordinary wooden bridges or combination bridges cost;-and we have today in the county of Missoula two pridges that have cost over this amount, one of which cost over this amount—$10,500; one cost $8,478; and when these bridges have to be renewed, which they will probably eight or ten or twelve years from now, with this provision in the constitution such a thing will not be possible without submitting it to the people; and if accidentally one of those bridges should be taken out by a high stretch of water, such as we had two years ago, it would not be possible for a Board of County Commissioners to go on and replace those bridges without submitting the question at a general election to a vote of the people and it would leave it in a very bad condition. Hence, if there is any limitation, it ought to be at least from $20,000 to $25,000.

But I would be in favor of striking this out. We have now a provision with regard to building jails and such improvements as that, when such a thing is necessary. If an Enabling Act cannot be gotten through the Legislature, then the question must be submitted to a vote of the people; but matters of this kind, as I said before, often have to be done in a hurry, particularly after freshets, which we have had in years gone by and are likely to have again; and I think this amendment should prevail and this portion of the section stricken out Hence, I will vote in favor of it.

Mr Ramsdell of Missoula I acknowledge that there is a little inconvenience occasioned by the calamity that the gentleman has just depicted, but at the same time, it seems to me an important matter to allow any County Commissioners to levy a sum exceeding $10,000 The inconvenience may be great, but at the same time the responsibility is far greater, and I believe that it is wise to limit the power of the County Commissioners to this sum. The distribution of money is an important matter with the people, and it will in time give rise to a great deal of jobbery. I know an instance in my own mind where men have been elected as County Commissioners for the sole purpose of furthering some scheme.

The Chairman: If the gentleman will pardon me for a moment, there is an amendment sent up here which would take precedence of the motion to strike out. The gentleman from Yellowstone moves to strike out the words "in figures $10,000" and insert "$15,000" at the end of line 6.

The motion was seconded.

Mr. Myers of Yellowstone It seems to me that $10,000 is quite large enough and that we ought to be very careful in this matter. We are limiting their power to create debts to five per cent of the taxable value, and there is danger of this thing running astray. I think this limitation that is placed upon it is quite large enough. It is a simple matter to be submitted to the people, and I hope that the amendment will not prevail.

Mr Hershfield of Lewis & Clarke: That was just the proposition which I wanted to state, that if there was any larger amounts required by the counties for the public affairs, and if the people are desirous of contracting the additional indebtedness, there will be no difficulty at all in obtaining the consent of the people to an increased indebtedness or liability. Now, $10,000 for any County Commissioners to expend upon any single item is ample and sufficient, and they ought to be limited to that amount My own idea is that I should reduce it.

The Chairman: The amendment to strike out the words "in figures $10,000" and insert "$15,000" is now before the committee,

The Chair put the question on the said motion to strike out $10,000 and insert $15,000, and a vote being taken the same was declared lost

The Chairman. The question now recurs upon the amendment of the gentleman from Choteau, to strike out all of the section after the word "void" in line 5

The Chair put the question on the motion to strike out, and a vote being taken the same was declared lost

There being no further amendments to Section 5, the Clerk read Section 6 as follows "Sec 6 No city, town, township or school district shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding three (3) per centum of the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount shall be void, provided, however, that the Legislative Assembly may authorize municipal corporations to incur such indebtedness as may be necessary to procure an ample supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt."

Mr Witter of Beaverhead I move that when the committee rise they report back the proposition with the recommendation on that it do pass.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Beaverhead, Mr. Witter, and a vote being taken, the same was declared carried.

Mr. Eaton of Park: I move that the committee do now rise.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Park, Mr. Eaton, and a vote being taken the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

Mr. Middleton of Custer: Mr. President, your Committee of the Whole have had under consideration Proposition No. 36 and report the same back with but one amendment in line 1 of Section 1, striking out the word "or"; and with that amendment recommend that it do pass.

The President: Gentlemen of the convention, you have heard the report of the Chairman of the Committee of the Whole, with the amendment reported. If there be no objection, the rules will be suspended, and considered and placed upon its final passage.

Mr. Hershfield of Lewis & Clarke: I move that the convention resolve itself into Committee of the Whole for the consideration of Proposition No. 38.

The motion was seconded.

Mr. Witter of Beaverhead: Let us get through with this proposition first.

Mr. Hershfield of Lewis & Clarke: I withdraw the motion

Mr. Luce of Gallatin: I move that Proposition No. 36 be placed upon its final passage.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Gallatin, Mr. Luce, and a vote being taken the same was declared carried.

The President: The Clerk will read the amendment.

The Clerk read as follows: Amend Section one by striking out the word "or" on line one.

Mr. Carpenter of Lewis & Clarke: I move to amend by striking out the word "or" where it occurs in line one and inserting "nor", and strike out "nor" where it occurs in line one and insert "or".

The motion was seconded

The Chair put the question on the motion of the gentleman from Lewis & Clarke, Mr. Carpenter, and a vote being taken, the same was declared carried.

The President: The gentleman from Choteau moves to amend by adding to Section 6 the words "or system of sewerage".

The motion was seconded.

The Chair stated the motion.

The Clerk read the latter part of the section six as proposed to be amended: "Provided, however, that the Legislative Assembly may authorize municipal corporations to incur such indebtedness as may be necessary to procure an ample supply or system of sewerage for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt."

The Chair put the question on the motion of the gentleman from Choteau, Mr. Conrad, and a vote being taken the same was declared carried.

The President: The motion to place the proposition No. 36 upon its final passage has been carried. The ayes and nays will be entered on the journal.

The Clerk called the roll on the adoption of Proposition No. 36.

The vote stood as follows: Ayes. Aiken, Bickford, Brazleton, Breen, Browne, Buford, Burns, A. F.; Cardwell, Cauby, Carpenter, Chessman, Collins, Conrad, Cooper, Courtney, Craven, Dixon, Durfee, Eaton, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Hershfield, Hickman, Hobson, Hogan, Joy, Kanouse, Kennedy, Knippenberg, Kohrs, Loud, Luce, Marrion, Marshall, Mayger, McAdow, Middleton, Mitchell, Myers, Parberry, Ramsdell, Rotwitt, Schmidt, Stapleton, Watson, Whitehill, Winston, Witter, Mr. President—55.

Nays: Knowles and Warren—2.

Absent: Bullard, Burleigh, Burns, A. J.; Burns, E.; Callaway, Dyer, Fields, Gaylord, Joyes, Maginnis, Muth, Reck, Robinson, Rickards, Sargent, Jos. K. Toole, J. R. Toole, Webster—18

The Chair announced the vote and declared Proposition No. 36 adopted as a part of the Constitution of the State of Montana.

The proposition was sent to the Enrolling Committee to be enrolled.

Mr. Joy of Park: I move that the Convention resolve itself into Committee of the Whole for the consideration of proposition No. 26.

The motion was seconded.

The Chair put the question on the motion of the gentleman from Park, Mr. Joy, and a vote being taken, the same was declared carried.

The President called Mr. Joy of Park to the Chair.

IN COMMITTEE OF THE WHOLE

Mr. Joy of Park in the Chair.

The committee was called to order

The Chairman· The Clerk will read section one of Proposition No. 26.

The Clerk read as follows: "Section 1. The water of every natural stream not heretofore appropriated within the State of Montana is hereby declared to be the property of the public; and the same is dedicated to the use of the people of the State, subject to appropriation as hereinafter provided."

Mr. Kanouse of Meagher sent up an amendment.

The Chairman: The gentleman from Meagher, Mr Kanouse, offers the following amendment.

The Clerk read as follows: "Substitute for section 1: All unappropriated waters within the State are declared to be public property and subject to appropriation pursuant to law."

Mr. Warren of Silver Bow: I move the adoption of the substitute.

The motion was seconded.

The Chair stated the question.

Mr. Kanouse of Meagher The amendment there is in accordance with the ideas expressed in section one of the proposition as printed; but the language used in the original section, it seems to me, does not comprehend all that should be included in the provision there. For instance, the language "the waters of every natural stream," would not include the waters of lakes or springs I understand that in connection with the proposition of supplying Helena with water somebody had suggested the bringing of a stream from some lake that has been discovered up in the mountains. Now, under the provision of section 1, the waters of such lake could not be appropriated; it could not be public use such as would be the case with every natural stream, and in the latter part of the section it declares that such waters are "subject to appropriation as hereinafter provided." Now, I undertake to say that this is a mistake; that it is not hereinafter provided as to the manner in which streams may be appropriated. That is provided for on page 995 of the Statutes of Montana, which provides for the posting of notice and for the construction of works. Now, this does not propose to do anything of that kind, and in that respect the language used there is not proper. I don't think that anything of that kind was intended It seems to me that the language of the amendment is concise, and covers perhaps all that was intended to be covered by the Committee having this proposition in charge, and it not only covers it all but it goes further in the matter of including all waters within the State which may be devoted or appropriated to beneficial uses.

The Chair put the question on the Substitute offered by the gentleman from Meagher, Mr Kanouse, and a vote being taken, the same was declared carried.

Mr Collins of Cascade. I move to amend the substitute by striking out the word "unappropriated" on the first line and after the first sentence; so that it will read "All waters within the State are declared to be public property."

The motion was seconded.

The Chair stated the motion.

Mr. Stapleton of Silver Bow: It appears to me that we are making a mistake in the wording of that; it appears to me that the wording should be "unappropriated waters". It appears to me that we are excluding from this section unappropriated waters. Now, we are declaring that all waters within the State should be public property, and we all know that a considerable portion of the waters of Montana has been appropriated as private property, and therefore this Convention has no right to change the ownership of that. Therefore, I would suggest that an amendment of that kind be made to say "that all unappropriated waters of Montana Territory" &c.

Mr. Burleigh of Custer: I think that is all right, except that there should be another proviso, and it should be this—(interrupted).

Mr. Kanouse of Meagher: I would suggest to the gentleman that that is the language of the substitute which has been adopted, so that it will include not only unappropriated, but also waters, which might heretofore have been appropriated, and it seems to me that that is the only question to consider in connection with the amendment that is offered to the substitute of the gentleman from Cascade, is whether or not the striking out of that word would not interfere with vested rights, by making subject to appropriation to be made hereafter, waters which are already appropriated. It seems to me we should proceed very cautiously in that matter. Inasmuch as I am not clear upon it, I am rather opposed to the amendment.

Mr. Bickford of Missoula: I would ask the gentleman who offered the amendment, if his amendment prevailed, if it would not make springs upon private lands subject to appropriation, if not in use by the owners thereof. I believe that the general doctrine of law has been that springs belonging to the land were not subject to appropriation. If the amendment of the gentleman from Cascade should prevail, I am afraid that the springs themselves would become subject to appropriation under the section as it would then stand.

Mr. Luce of Gallatin: I hope the amendment of the gentleman from Cascade will not prevail, because we would not own the water in our own wells. I undertake to say that a water right, or a right to use water is just as much property as is a horse for instance, and it would be just about as consistent for us to declare in this Constitution that every horse in the State should be the property of the State This is a very sweeping amendment It includes the right—the private right of parties to use water, and that property is declared, if this is carried, to be the property of the State. Certainly we do not mean anything of that kind, and I trust that this amendment will not prevail.

Mr. Cooper of Gallatin: If this amendment had emanated from that distinguished person, Henry George, or Dennis Kearney, I would not have been surprised, but to emanate from a gentleman, a citizen of Montana, identified with her interests, who proposes here by a dozen words to annihilate one-sixth or one-seventh of the property interest in this Territory, I am certainly very much astonished. It would be just as consistent to offer an amendment taking from him his bank stock, his bank account, and the cash behind his counter. Why, as I said before, one-sixth or one-seventh of the property of this Territory is in water ditches &c., and these rights are vested rights, and I hope his amendment will not, and I don't think it will, prevail.

Mr. Collins of Cascade: I believe that all waters within the State have heretofore been declared to be public property. Now, I may be mistaken about that; but something was said about it in the Article on Preamble and Bill of Rights, and I think Mr. Toole introduced a proposition, which was copied from the California constitution, declaring that all waters in the State shall be of public use. Now, in a country like this, I hold that the State or the county or the public should have the control of the water for manufacturing and irrigating and mining purposes; that no one man or body of men should have the power to appropriate water, whether it is done before or after this time, and not use it for beneficial purposes when his neighbors want it. Certainly water that has heretofore been appropriated, under the laws of Montana cannot be taken away. You cannot take away one single, solitary, vested right of any individual in Montana, who has heretofore appropriated its waters by law. But I do say that if any other man who has heretofore appropriated the waters of Montana or any corporation, should be subject to the public right, that the law should control that right so far as it can, and that man should not be allowed the exclusive use of that water for a purpose that is not beneficial, or for wasteful purposes or for any other purpose that is detrimental, or that he should not be allowed to use it at all. We can as well declare that the waters heretofore appropriated are public property, as to declare that the waters to be hereafter appropriated are public property, There is not a single bit of difference in the two propositions. The water of Montana and of all arid countries should be public property, and if you so declare it you don't take away a single interest that a man may have in the water heretofore appropriated, but you to provide that if he has a great amount of water that he must use it; that the public has control of it and must legislate upon it That is the main idea and I believe it is a good one Section 15 of the Preamble and Bill of Rights provides as follows: "The use of all water now appropriated or that may hereafter be appropriated for sale, rental, or distribution or other beneficial use, and the right of way over the lands of others for all ditches, drains, flumes canals and aqueducts necessary to use in connection therewith, as well as sites for reservoirs necessary for collecting, and storing the same shall be held to be public use." Now, there was no one that lifted up their hands in holy horror when that law passed, and that is almost the proposition that I submit to the Convention now, and I believe it is right. It is right from this foundation. It cannot be long under existing circumstances in this country, and I believe that the gentleman from Custer will coincide with me, as he has heretofore, and I believe he will now on this proposition. The intent of my amendment is already incorporated in this Constitution.

Mr. Goddard of Yellowstone· I submit to every lawyer that the intent of the gentleman's resolution is not incorporated in the Constitution at any place. The proposition incorporated in the Constitution arose upon the question as to whether the State has the right to say that private property can be taken for private use, and upon that proposition the amendment of Mr. Toole was introduced making all ditches a public use instead of a private use—simply declaring the distinction between a public and private use. It does not declare that all water taken by private individuals shall be public, it only declares that it shall be of public use, in order that a private individual may take out a private ditch and a right of way. That is the distinction. There is no where in the Constitution, so far as I know any provision which says that all of the waters of the territory shall be public waters, but all ditches whether public or private shall be considered in that respect as ditches for public use only.

The Chairman: The question is upon the amendment offered by the gentleman from Cascade.

Mr. J R Toole of Deer Lodge: I move to amend by moving that when this Committee rise they report Proposition No 26 back with the recommendation that it be laid on the table.

The motion was seconded.

The Chair stated the motion.

Mr. J R. Toole of Deer Lodge· I see no reason why this Constitutional Convention should deal with this matter now. It is a grave and conflicted question I can foresee that it is a matter that involves some of the permanent interests in the coming State of Montana, and I don't think it ought to be disposed of in this short bill such as this is here, that would make any iron clad provision for the future disposition of the waters of the coming State of Montana. It occurs to me that the Legislature of the coming State should be amply qualified to deal with this matter and to deal with it at length and in detail, and why we should occupy our time here now in incorporating any provision relating to it in the Constitution I don't understand. It occurs to me the proper thing to do is to relegate the whole matter to the future legislatures of the State, and as the wants of the people change, that we have better and more definite ideas of what is necessary in this matter, the legislature can unquestionably, it seems to me attend to it better than we can now For that reason I make the motion.

Mr. Eaton of Park· In support of the motion of the gentleman from Deer Lodge, I would say that the committee on mining, water and water rights had this general subject under consideration, and if there was any report to be made, they should have made it, especially in view of the fact that that was before the committee on irrigation was appointed. But in considering the subject in all its phases it was decided that it was entirely a matter of legislation, and they were guided by experience which perhaps does not pertain to our deliberation But as a matter of fact in the convention of 1884 this subject was made the matter of a rather exhaustive report from that same committee. They incorporated this and much more similar matter, and that convention, after much deliberation—I think it took two or three days—finally erased the whole matter and considered it to be the proper subject of legislation. And with that idea then expressed and as has been expressed on this floor, I heartily concur and I am in favor of the motion that when this committee rise it report back the matter with the recommendation that it be laid on the table.

Mr. Knowles of Silver Bow: Mr. Chairman, there is a great deal in this proposition 26 that should receive our consideration. Now, the proposition to declare all the waters of the State public property is a very important one. Why, so far as the appropriations that have already been made, it would hardly be a proper constitutional provision. The rights that men have to water that they have already appropriated are really guaranteed to them by an act of Congress. It is a grant to them of this right of water—"All water rights that are recognized by the laws and customs and decisions of the courts", I believe is the language of a provision of the law of the United States—"shall be recognized." And it is under the provisions of that statute that we have appropriated waters and that that right has been recognized as valid as against the sale of land over which the waters were accustomed to flow. But the declaration that all the appropriated waters shall belong to the public is a very important matter. Now, it will be remembered that I requested that this memorial that the gentleman from Lewis & Clarke, Major Maginnis, had referred to a committee to make a report upon, should not prevail, and that it should be recommitted. In the conversation that I had with this Congressional Irrigation Committee, I pointed out then the trouble that existed in relation to our controlling in the State the unappropriated waters in the State; that these waters had their sources in the mountains; that these mountains were unsurveyed; that the government of the United States had the title to that property; that we in our constitution here had disclaimed all right or title to the lands belonging to the United States or to any Indian or Indian tribes, and the term "land" as defined by the laws of the land included the water flowing over those lands; and when lands were sold over which water was accustomed to flow, and that water had not been diverted by appropriation in accordance with this act of Congress, that they probably would obtain title to it—that is, the government of the United States, by virtue of the term "lands," entitled to this water, that they would convey it to the parties to whom they gave a patent to the land. Senator Stewart took issue and claimed that the courts should ignore the old rule and that the courts themselves should decide that these waters were public property and that the decision that was made in California against Mr. Haggin should not prevail. Now, that requires a court to go to work to make laws, and the other gentlemen thought that the best thing that could be done about that was for this constitutional convention upon that subject to memorialize Congress and have Congress either grant to the States these waters or declare that the appropriation and use of those waters should be subject to legislative control; that the manner of the use, and the very proposition that Senator Stewart was contending for, that the large appropriation of water by one individual or a company of individuals, should not prevail; that there could be made provisions of law by which the owners of land could take up this water and divert it. But here were the laws of the United States upon this subject, and here was the fact that these waters being in the mountains—having their source in the mountains—that we could not control them. And Major Powell, who has this irrigation matter very much at heart saw the force of that and afterwards spoke to me about it; and they all thought that there should be some move in the new States that were being formed where irrigation prevailed, to get possession of these waters, or control of them in some way, so that by legislation we could control the use. And that is the reason that I believe that so far as saying that these waters are public, to be used only as provided by law, is a proper provision, provided we can get some action of Congress on this subject, to really facilitate that matter, to turn over the control and appropriation and use of these waters entirely to the State. There is in the grant of appropriation of waters at this time it must be in accordance with the—may be it is local rule or custom—decisions of the courts. Now, if we can establish here a different rule as to appropriation and use, we may be able to control it to some extent, being under the statute of Congress; and I believe that we had better leave that matter in there. The same provision, in almost the same terms, is in the Colorado constitution. I think that the proposition that was made by the gentleman from Meagher that this use of the water should be in accordance with law, is a very proper one, and then strike out the next section—"The right to divert and appropriate the waters to any use shall never be denied. Priority of appropriation will give the better right to those using the water" Now, the statutes of the Territory provide for that anyhow, but if we put this provision in here we put that beyond legislation; we cannot control it by legislation. And strike that out saying that these waters shall be public waters and subject to law. Then the legislature may provide for the use of these waters and how they shall be used, and may establish means of dividing up the water for irrigation and so that one party shall not have an excess of water and allow water to run to waste, and all such matters as that. That is as to future appropriation. Past appropriations cannot be affected by this Constitution. They have their grant from the government of the United States and except for a public use where they are condemned and damages paid, the State ought not to have the right to take those waters. And in relation to section 3, that is very much the same thing that we have put in our bill of rights. But still that in the bill of rights was a sort of limitation upon the power of the State rather than granting the power to the legislative authority of the State, while this section 3 is a grant of legislative authority to the State and is positive in its terms. Generally a bill of rights is a limitation upon powers rather than a grant of powers. Here this is a grant of powers, and I believe that ought to stand. This public use referred to by the gentleman from Cascade does not apply to water; that is across the land of others to irrigate—for irrigation ditches—and we declare that to be a public use; and I may say that Senator Stewart fully coincided with that. He thought that was just the thing to do, to decide that it was a public use In relation to this last section he said that they had that in the California constitution. I did not remember of seeing it in the California constitution; it may be there. They have it in the Colorado constitution; and he said they had had trouble in California upon this subject; that the courts had held that this was not an unlimited power so much so that they could make regulations that would confiscate a man's property, but that those regulations would be determined to be reasonable regulations such as would not confiscate a man's property. Now, if that regulation is put upon it, I am inclined to think that is proper. Some time ago in this convention there were gentlemen who were very urgent about this matter, and that the county commissioners should regulate these matters and prevent capitalists from appropriating large amounts of water and making the men on the line of their ditches serfs; and a good many of them talked a good deal about that subject. Now, I be-believe if you say that these county commissioners can make reasonable regulations on that subject, it is what we want; and then let the courts say what are reasonable regulations. But if you allow men with these large ditches, and digging out these large quantities of water, which they are doing all the time, and taking it out upon this arable land, then just as the gentlemen say, they make these men serfs What the gentlemen that were standing with me wanted to do was to try to facilitate this irrigation by putting a small amount of tax upon these ditch men and saying that it should only be upon the income, upon what was the reasonable income. and then going right, to the county commissioners to regulate the use of this water, so that these parties would not be serfs. I am not sure that the gentleman from Park voted against that proposition We wanted to put it on the ground that we were trying to make nabobs out of the men who constructed irrigating ditches and make the men that owned the land serfs. Now, I am in favor of putting that in here, that the county commissioners shall regulate the sale of water, and I believe that that is the way it ought to be. Just as the gentleman from Lewis & Clarke, Major Maginnis, said about that matter, it was a tribunal that was near the people; it was not away from the people And you will remember, Major Powell spoke here about having water courts to determine about the use of the water. Well, now, the county commissioners having the power to determine what was reasonable on this matter is a sort of special tribunal, a special court, to determine that matter; and I believe that it is a good place to have that power deposited—with the county commissioners—men that are elected by the people. And I do hope that the gentlemen who were so much afraid of exempting ditches from taxation—gentlemen here who are trying to build up the country and wanting it so that there could not be a monopoly of water, when these matters can be regulated by the county commissioners, will certainly vote to put this matter in.

Mr. Parberry of Meagher: I would like to see the resolution introduced by the gentleman from Deer Lodge, Mr. Robinson, on water rights—in regard to priority of rights—considered in connection with this.

Mr. Myers of Yellowstone: Judge Knowles fully covered the ground I intended to make, and that is that Colorado is cited as authority on irrigation. The laws are considered in advance of any other State or Territory. We carefully considered the constitution of Colorado, Nevada and other States that have both systems of irrigation, and decided that it was wise to introduce this in our constitution. It is almost identical with the constitution of Colorado, and I think we would make a great mistake and take one step backward if we fail to adopt this about as it came from the committee.

Mr. Burleigh of Custer: If the remarks of my friend from Silver Bow county relate to Silver Bow county, whatever he said I endorse; but I fail to appreciate the application of his logical remarks. It reminded me of a story I heard down in Pennsylvania. When Carter and Governor Somebody were down there speaking in the campaign of 1856 after they had been speaking a long while a fellow drove up with a keg of whiskey, finally the crowd commenced getting up and walking off, and there was one man left sitting on a pine stump opposite Carter, and another one with his head between his legs; and finally the fellow with his head between his legs pulled himself up and he said "I wonder what the H——l that man is talking about; he seems to be an honest man." And that's the way it is with my friend from Silver Bow. How, if I can get into my head the essence of what the gentleman said I think I can endorse it. It seems to me he ought to come to the point and let us know what we are voting on.

Mr. J. R. Toole of Deer Lodge: I am in something of the same condition as my friend from Custer. I listened to the remarks of my friend from Silver Bow very attentively, as I usually do, but I certainly could not see the point the gentleman was trying to make, and it seems to me it simmers down to this proposition; If the title to that land is in the United States Government, any action we take now does not invalidate that title or give us any better title. If it is not in the government of the United States, then I believe it should be in the hands of the legislature.

Mr. Knowles of Silver Bow: Suppose we memorialize Congress and ask for this water.

Mr. J. R. Toole of Deer Lodge: It seems to me that the single, plain proposition is: Is this title in the United States? If it is, any action we may take here is void; if it is not, then I say it is safe to leave it in the hands of the legislature. If it requires a memorial to Congress, I say, let us memorialize Congress; if we don't do it now, let the legislature memorialize Congress. But I certainly don't see if we have any right to these waters at all that we should go ahead and make any provision in this constitution that we may be sorry for, and for that reason I make the motion I do, notwithstanding the fact that this may all be in the constitution of Colorado, or any other State. It seems to me a plain proposition. If the State of Montana is entitled to this water, we can deal with it; if we have not the title to it and it is in the government of the United States, then let us memorialize Congress or petition Congress for further time. It occurs to me now, that any steps we may take here are simply a waste of time and a useless encumbrance of the constitution.

The Chairman: The Chair will state to the gentleman from Meagher County that the proposition he referred to was placed on file with the main report of the committee on water rights. The question is now on the amendment to the amendment, that when the committee rise it report back Proposition No. 26 with the recomendation that it be laid on the table.

Mr. Collins of Cascade: I hope that the motion will carry. We have already provided in Section 15 of our article on preamble and Bill of Rights all that is necessary to provide or to say in the matter of water or water rights, and this section if anything is solely legislation. Now, Section 2 of this article the gentleman from Silver Bow himself says should be stricken out. Section 3 is identical with Section 15 of the Preamble and Bill of Rights, which says that the use and right of way over the land of others for all ditches, drains, flumes, canals, etc., shall be a public use," and that covers particularly and fully Section 3. And it being a public use the Legislature has full power and authority to legislate in any manner it may see fit in the matter. Now, Section 4 is entirely legislation. Now, according to my notion, if the Legislature hereafter should provide some law, according to the suggestion of Major Powell or Senator Stewart, and provide special officers for the purpose of making regulations and distributing this water, then this Section 4 would forever be a bar to that. I believe that the Board of County Commissioners of our great counties—counties extending over many valleys, over many rivers, over many streams, with diversified interests—should not be the persons who are to be selected to make rules and regulations for the distribution of all the waters of their large counties. I think the Legislature should have the power at least to provide for particular officers to regulate particular irrigation districts. If you adopt this legislation in Section 4 you forever bind the hands of the Legislature. I believe that the motion to defer this whole matter should carry, simply because we have adopted all the fundamental law on the matter that we can adopt, in our Bill of Rights. All the rest is simply surplusage. If you don't add anything, the Legislature has full power and authority to do anything it pleases

The Chair put the question on the amendment to the amendment, and a vote being taken the same was declared carried.

Mr Warren of Silver Bow: I now move that the committee rise.

The motion was seconded.

The Chair put the question on the motion, and a vote being taken the same was declared carried

---

IN CONVENTION

President Clark in the Chair.

The convention was called to order.

Mr. Joy of Park: Mr. President, your Committee of the Whole have had under consideration Proposition No. 26, General File No. 25, Article on Irrigation, and beg leave to report back the same to the convention with the recommendation that it be laid on the table.

The President: You have heard the report of the committee. What is the pleasure of the convention?

Mr. J. R. Toole of Deer Lodge: I move the adoption of the report of the committee.

Mr. Witter of Beaverhead called for the ayes and nays.

The President: If there be no objection, the ayes and nays will be entered on the journal

The Clerk called the roll The vote stood as follows:

Ayes. Aiken, Bickford, Breen, Browne. Burleigh, Burns, A. F, Chessman, Collins, Conrad, Dixon, Durfee, Eaton, Gibson, Goddard, Hammond, Hartman, Haskell Hatch, Hickman, Hogan, Joy, Joyes, Knippenberg, Loud, Mayger, Middleton, Ramsdell, Rotwitt, Stapleton, Toole, J. R.; Winston, Mr. President—32.

Nays. Buford, Burns, A J, Callaway, Cardwell, Carpenter, Cauby, Cooper, Courtney. Craven Gillette, Graves, Hershfield, Hobson, Kanouse, Kennedy, Knowles. Kohrs Luce, Marrion, Marshall, Mitchell, Myers, Parberry, Schmidt Warren, Watson, Whitehill, Witter—28.

Absent Brazleton, Bullard, Burns. E., Dyer, Fields, Gaylord, Maginnis, McAdow, Muth, Reek, Robinson, Rickards, Sargent, Toole, J. K.; Webster—15.

Mr. Burleigh of Custer: I move that the convention do now adjourn.

The motion was seconded.

Mr Hickman of Madison: I wish to give notice that on tomorrow or some subsequent day I will move to reconsider the vote by which the report of the Committee of the Whole was adopted.

The Chair put the question on the motion to adjourn, and a vote being taken, the same was declared carried.

Adjourned until Wednesday, August 14th, 1889, at 10 A. M.

THIRTY-FOURTH DAY.

Wednesday, August 14th, 1889.

The convention was called to order by the President at 10 A. M.

The Clerk called the roll.

Mr. Stapleton of Silver Bow: Mr. Dixon has returned home on account of the sickness of one of his children. I ask that he be excused until such time as he returns.

The President: The gentleman will be excused until he returns, if there be no objection.

The Chaplain offered prayer.

The Clerk read the journal of the previous day.

Mr. Warren of Silver Bow asked that the Chair might rule on the question as to whether a minority of the convention could pass any ordinances whatever. Mr. Warren said that it was his understanding that it required a majority of the convention to pass any ordinance.

The President: To which resolution does the gentleman refer?

Mr. Warren of Silver Bow: More particularly to the one unseating the county officers.

Mr. Maginnis of Lewis & Clarke: I would ask for the reading of the rule of the convention which requires a majority.

Mr. Hershfield of Lewis & Clarke: The reason that we would like to get a ruling of the Chair on this matter is that we notice in the reports from the other conventions in the other territories that unless a majority of the convention voted for a proposition to be inserted in the constitution, they held that such propositions were not carried and could not be inserted in the constitution; and if their rules are similar to ours, we want to know.

Mr. Maginnis of Lewis & Clarke: I would ask the gentleman if their rules are similar to ours?

Mr. Hershfield of Lewis & Clarke: We have a right to presume that they are.

The President: The Chair will take the matter under advisement and render a decision in due time.

Mr. Callaway of Madison: It would perhaps be a matter of wisdom to decide the matter today. If the Chair rules that it requires a majority of the convention to pass an ordinance, we would want to move to reconsider.

The President: The Chair will endeavor to look into the matter very soon. There being no Assistant Sergeant-at-Arms, the Chair will appoint Mr Kerr to fill that position until he is required as a Clerk. His services are not particularly needed in that direction at present. The Chair has a communication from the librarian which will be read.

The Clerk read as follows:

"Helena, Mont., August 13, 1889.

"Hon. W. A. Clark, Presdent Constitutional Convention, Helena, Mont.

"Dear Sir: This society would like to keep and preserve the photographs of the members of the historic convention over which you provide. The artist says he will furnish, duly mounted and framed, cabinet-sized pictures of the members of the convention for $15, and the officers of the convention in proportion. This would cost 20 cents each. If the gentlemen of the convention will furnish their likenesses as above described, I will arrange in pamphlet form the biographical sketch of each as published in the Helena papers for reference and preserve them with the photographs.

"Very respectfully,

"(Signed) WILLIAM F. WHEELER, Librarian."

The President: The Chair wishes to call attention to this matter and no doubt the members will gratify the librarian, as it is a matter of historical interest, as the librarian suggests, and it is hoped the members will so consider it and act accordingly.

Mr Cooper of Gallatin: Mr. President, the Committee on Apportionment and Representation is ready to report, and all but two of the committee have signed the report, and one or two are absent. We will present the report before the forenoon session is ended.

Mr. Warren of Silver Bow: It is about time this committee made its report and these copies were printed, instead of waiting till the end of this convention. I would like to have the report printed, and I make that motion.

Mr. Maginnis of Lewis & Clarke: I would ask if there is any report before the convention.

The President: There is no report before the convention yet.

Mr. Cooper of Gallatin: We will be prepared to make a report during the forenoon.

Mr. Hershfield: As I understand it, the request of the gentleman from Silver Bow was to instruct this committee to send it to the printing committee.

The President. The Chair did not so understand the motion.

Mr. Eaton of Park: For information, I would like to ask what report, if any, the Chairman of the Committee on Apportionment did make this morning. Yesterday he asked time or said in substance that that committee would be able to report this morning. I think he was on his feet this morning, but I did not hear what he said.

The President: The Chairman of the committee stated that the report was signed by all but two members, and that he would report during the morning session.

Mr. Carpenter of Lewis & Clarke sent up a resolution which the Clerk read as follows: Proposition relating to the constitution. Upon all questions submitted to the vote of the taxpayers of the State or any political division thereof, women who are taxpayers and possessed of the qualifications for the right of suffrage required of men by this constitution, shall, equally with men, have the right to vote.

The President: This will be received and referred to the Committee on Suffrage, if there be no objection.

Mr. Warren of Silver Bow: I would like to ask the Chairman of the special committee appointed to consider and report on the memorial presented here the other day, about what time we may expect a report.

The President. Will the gentleman from Lewis & Clarke, the Chairman of that committee, give the gentleman the information requested?

Mr. Carpenter of Lewis & Clarke I do not think that is in order now.

The President: The point of order is well taken. The order of select committees has been passed.

Mr. Warren of Silver Bow: I move that that memorial be taken up from that committee and another special committee appointed who will report.

The motion was seconded.

The President. It has been moved and seconded that the special or select committee to which was referred the Warren memorial in relation to the taxation or duties upon imported lead ores, be taken from the committee which was appointed to consider it and another committee appointed

Mr. Goddard of Yellowstone: Governor Carpenter, at divers and sundry times, has requested the committee to meet This matter can be voted on in five minutes as soon as the committee can be got together.

Mr Callaway of Madison: I have an amendment to offer. I move that the committee be instructed by this convention to report their action on the memorial at the morning session tomorrow morning.

Mr Warren of Silver Bow: I accept the amendment.

Mr. Maginnis of Lewis & Clarke: I trust no such action is intended as a reflection on that committee. Governor Carpenter, who is one of the most diligent, able and earnest members of the convention, is at the head of that committee and undoubtedly will prepare that report and offer it in due time. Mr. Stapleton also is on that committee, and I know that the committee will act as soon as it is possible for them to do so.

Mr. Middleton of Custer: I move that the motion just made be laid on the table.

Mr. Burleigh of Custer. If I may be allowed to suggest, I would suggest that in order to prevent the interruption of the work of the convention, a dose of soothing syrup be administered to the gentleman from Silver Bow.

Mr. Carpenter of Lewis & Clarke: I wish simply to say that we intended to have met yesterday, but some of the members of the committee got out of the house before the committee got together. We intended to have met after the morning session today, and hope to report this afternoon, unless somebody should object to a report being made on account of its not being in order.

Mr. Callaway of Madison: I had no thought whatsoever of reflecting on the action of the committee in not reporting, but you are aware, sir, that the days are drawing very near when we will adjourn, and I for one want to see some action taken upon this memorial. I therefore want it brought before the convention at a time when it can be considered; but after the explanation of the gentleman from Lewis & Clarke, with the consent of my second, I will withdraw my motion.

The President: The motion is withdrawn.

Mr Goddard of Yellowstone: I would like to inquire whether the article on schedule has been considered.

The President: The Chair would inform the gentlemen that it has not.

Mr. Goddard of Yellowstone: I move then, sir, that the convention resolve itself into Committee of the Whole for the consideration of general orders.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken the same was declared carried.

The President called Mr. Chessman of Lewis & Clarke to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Chessman of Lewis & Clarke in the Chair.

The Committee was called to order.

Mr. Witter of Beaverhead. I move we take up Proposition No. 38.

The motion was seconded.

The Chairman: If there be no objection, the committee will take up Proposition No. 38.

The Clerk read Section 1 as follows:

Section 1. All laws enacted by the Legislative Assembly of the Territory of Montana and in force at the time the State shall be admitted into the Union and not inconsistent with this constitution or the constitution or laws of the United States of America shall be and remain in full force as the laws of the State until altered or repealed or until they expire by their own limitation; Provided, That wherever in said laws the words "Territory" or "Territory of Montana" occur, the words "State" or "State of Montana" shall be appropriately substituted and read therefor. And provided further that the duties which now by law devolve upon Probate Judges as Jury Commissioners and in relation to issuing marriage licenses and filing and recording marriage certificates and the dutes as ex-officio clerks of their own courts shall, until otherwise provided by law, devolve upon and be performed by the Clerks of District Courts in their respective counties. And provided, further, That the duties of Probate Judges now imposed by law relative to townsites and to the approval of bonds of other county officers shall, until otherwise provided by law, be performed by the District Judges in the several counties in their respective districts.

There being no amendment to Section 1, the Clerk read Section 2, as follows: Sec. 2. All lawful orders, judgments and decrees in civil causes, all contracts and claims and all lawful convictions, judgments and sentences in criminal actions, made and entered, or pronounced by the courts within the Territory of Montana, and in force at the time the State shall be admitted into the Union, shall continue and be and remain in full force in the State unaffected in any respect by the change from a Territorial to a State form of government, and may be enforced and executed under the laws of the State.

There being no amendment to Section 2, the Clerk read Section 3, as follows:

Section 3. No crime or criminal offense committed against the laws of the Territory of Montana shall abate or be in any wise affected by reason of the change from a Territorial to a State form of government, but the same shall be deemed and taken to be an offense against the laws of the State, and the appropriate courts of the State shall have jurisdiction over and to hear and determine the same. Provided, That this section shall not in any wise be construed to change the laws of the statute of limitations or the due effect or application of the same.

There being no amendments to Section 3, the Clerk read Section 4, as follows:

Section 4. Except as herein otherwise provided the word "District" shall be substituted and read in lieu of the word "Probate" in the terms "Probate Court" or "Probate Judge" wherever the same occur in the laws of the Territory of Montana and all said laws which by their terms apply to Probate Courts or Probate Judges shall upon a change from Territorial to State Government be deemed and taken to apply to District Courts and District Judges. Provided, That all laws allowing fees to Probate Judges are hereby repealed.

Mr. Bickford of Missoula: I would suggest that at the end of Section 4 there should be inserted a clause providing that the terms of the Probate Court, or the terms of the District Court, shall be as provided in this constitution, because this section as it appears to be here would make the terms of the District Courts conform to the terms of the Probate Court as now established by law.

The Chairman: Will the gentleman please send up his amendment in writing?

Mr. Goddard of Yellowstone: As soon as Section 2 was passed, I noticed something here omitted, and that is in relation to processes issued in the courts It reads. "All lawful orders, judgments and decrees in civil causes," etc. I think the word "processes" should be inserted after the word "decrees" in the first line.

Mr. Luce of Gallatin: Section 9 covers it.

Mr. Knowles of Silver Bow. I think there is something in the suggestion of the gentleman from Yellowstone.

Mr. Bickford of Missoula: (Reading proposed amendment) "And provided further that the terms of the District Court shall be as in this constitution provided."

Mr Knowles of Silver Bow There is no provision in this constitution.

Mr Bickford of Missoula: Yes sir; if you will refer to the report of the Judiciary Committee, the courts have a right to fix the terms, and it is provided that they shall not hold less than four terms of court.

Mr. Marshall of Missoula The district court shall be always open.

Mr. Bickford of Missoula And in other counties it shall not be less than four terms per year, in each county.

The Chairman: The gentleman from Missoula offers the following amendment: Insert after the word "shall" in line four, Section four, the words, "except as in this constitution otherwise provided".

Mr. J. R. Toole of Deer Lodge moved the adoption of the amendment. The motion was seconded.

Mr. Luce of Gallatin: The first five words of Section 4 I think cover it—"Except as otherwise provided," etc. Then follows the language of the section. We have otherwise provided in the Judicial Article, Section 17. "The district court in each county, which is a judicial district by itself, shall be always open for the transaction of business, except on legal holidays and non-judicial days. In districts where two or more counties are united, until otherwise provided by law, the district judges shall fix the terms of court, provided that there shall be at least four terms a year held in each county" And where it is otherwise provided, the laws of the State, or the laws that now exist which were adopted by the State, will have to conform to the provisions of this constitution. My opinion is that this is a matter which is sought to be interjected here as simply surplusage.

Mr. Bickford of Missoula I would say that my amendment was offered for the purpose of making the section certain and providing against that provision of the probate law which provides that the terms of the Probate Court shall be held at certain times The constitution, according to the report of the Judiciary Committee, which has been adopted, provides that the Probate Court is to be done away with, and in order that there may be no uncertainty in regard to this matter, I think it would be essential that we should put these words in where I have offered them, after the first word "shall" in line four of Section four. The words "except as herein otherwise provided" would possibly limit the whole section; but if there should be any question or any doubt about that matter, the inserting of those words after the word "shall" in line four will make it beyond any controversy that the Probate law as it now stands will not be held to apply to district courts as established by the Judiciary Committee, and we will then have the terms of court as estabished by the Judiciary Committee. Otherwise it might be construed that the District Court could be compelled to hold sessions in all these counties where there is more than one county in a district; that they shall be compelled to hold their sessions at certain times. That would make it utterly impossible for the District Judge to be present in each of the counties at the commencement of the term of court, and would result in a great deal of inconvenience.

Mr. Knowles of Silver Bow: I think that this will have a tendency to put this matter beyond question, and it ought to be in here. There might be somebody else that would raise the same question about this matter that the gentleman from Missoula has, and I think it ought to be put in here, so as to put it beyond doubt.

The Chair put the question on the adoption of the amendment offered by the gentleman from Missoula (Mr. Bickford) and a vote being taken, the same was declared carried.

There being no further amendments to Section four, the Clerk read Section five, as follows:

Section 5. Clerks of District Courts until otherwise provided by law shall each perform the duties and be entitled to the same fees as now provided by law for Clerk of the District Court of the Territory, and until otherwise provided by law, shall also perform the services and be entitled to fees therefor that are now provided for Clerks of Probate Courts.

Mr. Hershfield of Lewis & Clarke sent up an amendment.

The Chairman: The gentleman from Lewis & Clarke (Mr. Hershfield) proposes to strike out in third line after the word "services" up to the word "that" in line four. Also to strike out the words "provided for" in line four, and insert the words "applicable to".

Mr. Collins of Cascade moved the adoption of the amendment.

Mr. Burleigh of Custer: How would the section read when amended?

Mr. Hershfield of Lewis & Clarke: It will read as follows: Clerks of District Courts until otherwise provided by law shall each perform the duties and be entitled to the same fees as now provided by law for Clerk of the District Court of the Territory, and until otherwise provided by law, shall also perform the services that are now applicable to the Clerks of Probate Courts.

Mr. Knowles of Silver Bow. You strike out the word "fees".

Mr. Hershfied of Lewis & Clarke: That is just the object. So that the Clerk of the District Courts shall not receive the fees of the Probate Courts.

Mr. Knowles of Silver Bow: But he doesn't receive the fees. The Clerk of the District Court will receive say five dollars for bringing a suit; then he would receive $2.50 for a judgment. But in the Probate Court there are fees for filing an application to be appointed administrator, and for posting notices for applications for administrator, and a great many services of that kind, in minutia—small fees, some of them only 45 cents. Now, if you strike out all of those fees you require a Clerk of the District Court to do all of those things that are to be done by the Clerk of the Probate Court for nothing. He gets only fees for bringing suits in the District Court. That is all the fees he would get, and yet he is required to perform all of the services that are now performed by the Clerk of the Probate Court, which are very many—nine-tenths of the business of the District Court. It would be a great hardship, and really a great outrage, to require a Clerk to perform all those duties without any compensation whatever.

Mr. Hershfield of Lewis & Clarke: Don't you think that the Legislature will provide for the necessary fees—the first Legislature that will meet—and I don't think it is right that Clerks of the court shall be receiving double fees. Our District Judges don't receive the additional fees that the Probate Court Judges receive, and I don't see why we should make any distinction in reference to these Clerks. The salaries and fees of the Clerks of the District Court are sufficient for any person that is capable of performing the duties, and add to that the fees which he would derive from the services of the Probate Clerk and it would be entirely beyond the merits of the Clerk.

Mr. Burleigh of Custer: I agree fully with the gentleman from Silver Bow County in regard to this question of fees for the Clerk of the Court. The Clerk has a salary and certain fees now for transacting business in the District Court. The Probate Court is abolished and the duties are all shifted over upon the Clerk of the District Court; and while this strikes out the salary provided by law—such salary as there may be for the Clerk of the Probate Court—it is no more than right that the fees which attend that part of the administration of probate matters should be continued. Our Clerks are poorly enough paid now for the services they have to perform, and to saddle upon them all the duties of probate matters in addition, it seems to me would be a great act of injustice to them, and I for one cannot consent to it.

Mr. Knowles of Silver Bow: I wish to call the attention of the gentleman to this fact, and that is, that there is a Clerk for each county, and yet he speaks about exorbitant fees. Now, in this county, why, of course the fees for the Clerk of the Court, being Clerk of the Probate Court as well, will be pretty large. But then I would like to have the gentleman understand the situation of affairs outside of this county and consider a county like Dawson or Fergus or Cascade or Choteau. Why, taking all of these fees that will be provided by law, the Clerk will get a very small compensation The amount of business is not very large. Now, the gentleman speaks about the Judges. Why, we had three Judges to perform all of the duties of the District Courts of the Territory; they had Clerks that were appointed for their districts; but now we have eight District Judges, and we give them $3500, while the other Judges only got $3,000 and their traveling expenses, as provided by the Legislature; and these Judges will perform no Supreme Court duties at all; so that it is not fair to make a comparison of this matter; and yet in two or three of the counties under the present fees the Clerks' fees will be pretty good, but except in about three counties of the Territories the fees of the Clerks of the District Courts will not be very good fees The office is now a small office, and heretofore the Deputy Clerks of the District Courts have frequently had to get somebody to perform the duties because they had other business; they didn't stay in their offices all the time. I know in one or two counties that is the case, that the Clerk of the District Court was a person who had other duties to perform than those of Clerk of the District Court. Well, now, it is quite essential to have a man who will attend exclusively to the duties of the office of Clerk: that he will be in his office, so that when any person has any business to transact with the Clerk of the Court—the Clerk of the Probate Court, and so on—they will find him there in his office that will be provided by law for him to hold, and I trust we will not strike out the clause allowing him fees for probate business

Mr. Goddard of Yellowstone: I am certainly opposed to striking out the fees of the Probate Court in this section, for the reasons that have been mentioned by the gentlemen, and some other reasons. In the first place, as the judicial districts are now arranged, there is a Chief Clerk of the district, and each county has a deputy who is appointed by the Judge of the district; and most of these counties—in the small counties at least—the fees of the Clerk and the Deputy Clerk of the District Court are very small, and I might say that the fees of the Clerk of the Probate Court are very small. This will be an elective office under the constitution, and my understanding is that these fees provided for here only continue until they are changed by law, and I am satisfied that in order to get a good man for the office of Clerk of the District Court—and it certainly requires one of the best posted and the best skilled men that you can get in a county—in order to get such a man we will necessarily have to pay him fees which will justify him in giving his entire time to the office, otherwise someone will be elected who has other business to attend to and consequently will be out of his office half the time. Again, under the provisions of this constitution, the Clerk of the District Court will be Clerk of the Probate Court as well, and it will necessitate his being in his office all the time, the same as any other county officer, inasmuch as all the probate business will be transacted by the Clerk—all of the clerical part—the issuing of all orders and everything of that kind, posting of notices, granting of letteers of administration and guardianship, and all of that kind of thing will be done in vacation by the Clerk, so that most of the work will devolve on the Clerk, and certainly he should have compensation to justify him in giving his entire attention to the duties of the office; and, as I said before, I am satisfied that the combined fees of the two officers will not be any more than the Clerk will be entitled to I am not in favor of paying more salaries than will properly compensate good officials, but I am in favor of paying good officials salaries commensurate with the services performed.

Mr. Collins of Cascade: I hope that the amendment of the gentleman from Lewis & Clarke (Mr. Hersfield) will pass. I believe that each Clerk of the District Court receives sufficient salary without adding thereto the fees of Probate Clerks The Deputy Clerk of the District Court in each county in this Territory having an assessed valuation of three million dollars receives $1,000. That is not the District Clerks, but the Deputy Clerks; and in addition to that they have fees That is in accordance with the law passed at the last session of the Legislature. Now, before the session of the last Legislature the Clerks were all satisfied with only fees alone, and the Clerks of the District Court, so far as I know, were perfectly satisfied and they all attended to the duties of their offices as competently and faithfully as they do now with the additional salary of One Thousand Dollars. Now, sir, we provide for a Clerk for each county—a Clerk of the District Court; in all of these counties he receives a salary of One Thousand Dollars, and then he receives his $5 for filing a case and $2.50 for filing an answer, in all amounting to $7.50 And in addition to that he receives his fees for naturalization, his fees for acknowledging, his fees for swearing to papers, and his fees for every particular thing he does; and it seems to me that is plenty for the Clerk of the District Court. If he swears a person to a claim against an estate, if an order is made in the case, or if there is a final adjudication of that case he gets a fee for it: and I believe it is making a princely salary to allow these Clerks this increased compensation that they have been allowed since the last session of the Legislature, and also allow them the princely fees charged by Clerks of the District Courts. Now, we all know that the fees of the Probate Clerks are extortionate, and whenever there is any business to speak of, too much money is received from the people for those services. Take the large counties of Missoula and Silver Bow and Deer Lodge and Lewis & Clarke, I will venture to say right here—and no lawyer can contradict it—that if the Clerk of the District Court receives also solely the fees provided by law for Clerks of the Probate Court, he will receive a princely salary—a good salary. Leave out entirely the amount of money received as Clerk of the Court as salary, and give him alone the fees prescribed by law for the Probate Court, and he will receive a good salary. Now, I say that openly and above board, and the lawyers here are all conversant with it, and I ask them if that is not the fact? You give them a good salary and you give them good compensation for the services they perform besides.

Mr. Middleton of Custer: I think if the gentleman from Cascade would take into consideration the entire situation and the small amount of compensation that is provided for in the way of fees for Clerks of Probate Courts—the small amount of work that these new Clerks will have to do in the way of probate matters, he would not be so sanguine of the Clerks receiving a good remuneration for probate fees. It is true that at the present time the Clerk of the Probate Court gets fees in all criminal misdemeanors that are tried in that court and gets fees in all civil actions that are commenced in the court—a civil action can be commenced in the Probate Court for any amount less than $500—but the only fees that the Clerk of the District Court will get by reason of this additional charge or duty is simply the fees in matters of the probate of an estate, or guardianship, and such things as that—simply in probate matters strictly. Well, now, the fact is that for the amount of work that has been done by a Clerk of the Probate Court—the clerical work—the compensation is practically nominal. I do not know of any other officer that is paid as little for the amount of work that he is required to do in a clerical way as the Clerk of the Probate Court in matters of probate. Now, all of these other matters the Clerk of the District Court will have nothing to do with unless a civil action should be commenced there. So far as criminal misdemeanors are concerned, and the examination of offenders, those matters will not go into the District Court at all; and in view of the fact that the statute provides for these fees—that the amount of work to be done is such that the fees for its performance are small—it seems to me that it would be wrong to insist that the Clerk of the District Court should perform those duties without any compensation My observation has been that when you place an officer in a position where there are certain duties that he is required to perform for which he receives no remuneration, that those matters are either not attended to promptly or are not half performed, I believe he should receive just exactly the same compensation as is now provided by law for Clerks of Probate Courts; and if the Legislature finds, even at its first session, that in some of the larger counties it is working a hardship and that the Clerks are getting more than they should get for their salaries, a different arrangement can be made—a graduation can be made as to the amount of business to be transacted in each county or in each district. But until that is done I think it will be a mistake to provide that the District Clerks should have to perform these duties without the compensation now provided by law for Probate Clerks.

Mr. Burleigh of Custer. I heartily concur in all that has been said by my colleague in regard to the compensation that our Clerks, both of the Probate and District Courts, are entitled to I know that until the last session of the legislature the clerk of our District Court and the Clerk of our Probate Court in Custer County were not making a livelihood; they were running in debt every day, and had not the legislature increased the compensation they would both have been compelled to resign their positions. Now, we have in Custer county a gentleman as District Clerk who has been there for several years, and he is one of the most faithful and efficient clerks I have ever seen He is as true as steel to every duty that has ever been entrusted to him The duty under the circumstances of discharging the functions of the clerk of the district court and also of probate matters would fall upon him. It will be discoverd here that the salary provided for the probate court by the last Legislature in our county was $800 a year, and had not those provisions been made our probate judge, who is acting as exofficio clerk, would have been compelled to abandon his office, and but for the earnest solicitation of his friends and the hope of an increase in compensation that had been held out to him, he would have resigned Now, when my friend gets up and speaks about the princely salaries that these men receive, the compensation is all in his eye; there is nothing in it. It may exist in Lewis & Clarke County, it may possibly exist in Silver Bow County, and it may possibly exist in Missoula county I am very sure it does not exist in Cascade County, and I am sure it does not exist in Custer county, and I am opposed to reducing the salary of any officer of this State soon to be to the miserable condition of being compelled to do his duty day after day and week after week in the most responsible position, and realize that he has made scarcely enough at the end of the week to carry himself and his wife and children over Sunday. I think if my friend from Cascade would look the whole Territory over and not let the vision of Lewis & Clarke and Silver Bow and Missoula county shine with such effulgence in his eyes, that he would look at it in a different light. I hope it will remain as it is and that the clerk of the District Court will receive the fees which he now receives as clerk of the District Court and also the fees less the salary which now goes to the probate court.

Mr. Hartman of Gallatin· I just want to add one word to what has been said, and that is this: I am willing to admit that if it were in the power of any one man to perform the duties of clerk of the District Court with the added probate duties to it, then in Lewis & Clarke County he would have a princely compensation; but it is not within the power of any two men to perform the services of that office when the probate business is added to it. If the gentleman from Lewis & Clarke had any conception of the duties that devolve upon the clerk of a probate court he would not have introduced this amendment here.

Mr. Hershfield of Lewis & Clarke: How does the gentleman know he has not?

Mr Hartman of Gallatin I know you have not, because no gentleman who was familiar with it would possibly have introduced it. Nine-tenths of the duties of the probate court at the present time are performed by the clerk of that court Every petition, every account, every order, every letter of administration, every bond of every officer, administrators and guardians, have to be spread at length upon the records. So I pretend to say that there is no man—no one man—can perform the duties in Lewis & Clarke county relating to probate papers which enter into the settlement of probate estates; and I say that the gentleman is not familiar with it because the duties have not made him familiar with it; a man in business is not supposed to be familiar with it. I never had anything to do with the banking business, and he has never had anything to do with the settlement of estates and I don't know anything about it, and I say that those gentlemen who are familiar with that offfice know that no one man can perform the duties—no one man can perform the duties in half of the counties. In our own county, where there is not one-third of the business there is in this, it will take two men to perform the duties of this office; and so I say it will be an imposition, and no competent man will take it unless these fees are allowed to remain attached to the office.

Mr. Luce of Gallatin: I suppose if the people of Montana were paying for the time of the gentleman that perhaps they would be compelled to pay more for the time we have been discussing this question, than they will have to pay in the additional cost of fees. Now, let us see. Section 5, (Reading) "Clerks of District Courts until otherwise provided by law shall each perform the duties and be entitled to the same fees as now provided by law for clerk of the District Court of the Territory, and until otherwise provided by law, shall also perform the services and be entitled to fees therefor that are now provided for clerks and be entitled to fees therefor that are now provided for clerks of Probate Courts." How many days after this State shall have been admitted into the Union will it be before we will have a legislature that, if these fees are burdensome to the people, may otherwise provide by law. I think we are wasting too much time over small game. There is pretty large game ahead of us. I think we ought to get this constitution out in shape and get it before the people so that they can cast their votes in favor or against it as they see fit. But this is a very small matter, and I am of the opinion that there will have to be extra clerks provided in many of the large counties—in most of the counties, to perform the duties of probate court.

The Chair put the question on the amendment offered by the gentleman from Lewis & Clarke (Mr. Hershfield) and a vote being taken, the same was declared lost.

There being no further amendments to section 5, the clerk read section 6, as follows:

Section 6. Upon a change from Territorial to State government the seals in use by the Supreme Court and the Territorial District Courts in and for the several counties respectively, shall pass to and become, until otherwise provided by law, the seals respectively of the Supreme Court and of the District Courts of the State in such counties.

There being no amendments to Section 6, the clerk read Section 7, as follows:

Section 7. Prosecutions for criminal offenses against the laws of the Territory of Montana, pending at the time the State shall be admitted into the Union, shall not abate; but the same shall continue and be prosecuted in the name of the State of Montana, and the title of every action shall be changed to conform to this provision.

There being no amendments to Section 7, the clerk read Section 8, as follows:

Section 8. Parties who, at the time of the admission of the State into the Union, may be confined under lawful commitments or otherwise lawfully held to answer for alleged violations of any of the criminal laws of the Territory of Montana, shall continue to be so confined and held until discharged therefrom by the proper courts of the State.

There being no amendments to Sec. 8, the Clerk read Sec. 9, as follows:

Section 9. All writs, processes, prosecutions, causes of action, claims and rights of individuals, associations and bodies corporate existing at the time the State shall be admitted into the Union shall continue and be respectively executed, proceeded with, determined, enforced and protected under the laws of the State.

There being no amendments to Section 9, the Clerk read Section 10, as follows:

Section 10. All undertakings, bonds, obligations and recognizances in force at the time the State shall be admitted into the Union which were executed to the Territory of Montana or any officer thereof in his official capacity or to any official board for the benefit of the Territory of Montana, are hereby respectively assigned and transferred to the State of Montana, to the State officer successor to said Territorial officer, or to the official board successor to the aforesaid official board for the use of the State, as the case may be, and shall be as valid and binding as if executed under State law to the State or State officer in his official capacity or official board for the benefit of the State; and all fines, taxes, penalties and forfeitures due or owing to the Territory of Montana, or to any county, school district or municipality therein at the time the State shall be admitted into the Union, are hereby respectively assigned and transferred and the same shall be payable to the State, county, school district or municipality, as the case may be, and payment thereof may be enforced under the laws of the State.

Mr. Burleigh of Custer: I move to go back to Section 9 and on the first line, after the words "all writs, processes, prosecutions, actions and causes of action", etc.

The motion was seconded

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

There being no amendments to Section 10, the Clerk read Section 11, as follows:

Section 11. All property, real and personal, and all moneys, credits, claims, demands and choses in action of every kind, belonging to the Territory of Montana at the time the State shall be admitted into the Union, are hereby assigned and transferred to and shall be vested in and become the property of the State.

There being no amendments to Section 11, the Clerk read Section 12, as follows:

Section 12 All obligations of the Territory of Montana, existing, in force and unpaid at the time of the admission of the State into the Union, are hereby assumed by the State which shall and will well and truly pay the same.

There being no amendments to Section 12, the Clerk read Section 13, as follows:

Section 13. All matters, cases and proceedings pending in any Probate Court of the Territory of Montana, at the time the State shall be admitted into the Union, and all official records, files and other property of or pertaining to such court, are hereby transferred to the District Court in and for the same county, and such District Court shall have full power and jurisdiction to hear, determine and dispose of all such matters, cases and proceedings.

Mr. Hershfield of Lewis & Clarke sent up an amendment.

The Chairman: The gentleman from Lewis & Clarke proposes the following amendment. After the word "files" in line two, insert the word "moneys".

The motion was seconded.

Mr. Luce of Gallatin: It is covered by the words "and other property of or pertaining to such court" There cannot be any question about that.

The Chair put the question on the said amendment, and a vote being taken, the same was declared carried

There being no further amendments to Section 13, the Clerk read Section 14, as follows:

Section 14. All actions, cases and proceedings and matters which shall be pending in the Supreme and District Courts of Montana Territory at the time of the admission of the State into the Union whereof the United States Circuit or District Court might have had jurisdiction had such court existed at the commencement of such actions, cases, proceedings and matters, respectively, shall be transferred to said United States Circuit and District Courts, respectively; and all the files, records, indictments and proceedings relating to such actions, cases, proceedings and matters shall also be transferred to said United States Courts; Provided, That no civil action, cause or proceeeding to which the United States is not a party shall be transferred to either of said United States Courts except upon written request of one of the parties thereof, and in the absence of such request such cases shall be proceeded with in the proper State Courts.

There being no amendments to Section 14, the Clerk read Section 15, as follows:

Section 15. All actions, cases, proceedings and matters pending in the Supreme and District Courts of the Territory of Montana at the time the State shall be admitted into the Union and all files, records and indictments relating thereto, except as otherwise provided herein, shall be appropriately transferred, as may be proper, to the Supreme and District Courts of the State, respectively, and all such actions, cases and matters shall be proceeded with in the proper State courts.

There being no amendment to Section 15, the Clerk read Section 16, as follows:

Section 16. Upon a change from Territorial to State government, and until otherwise provided by law, the great seal of the Territory shall be deemed and taken to be the great seal of the State of Montana.

Mr. Burleigh of Custer: I move that the committee go back to Section 11 and at the end of the section insert the words "of Montana", so that it shall read "of the State of Montana".

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

Mr. Knowles of Silver Bow: So far we have proceeded with other propositions to be placed in the constitution, there are some matters that we thought should not pertain to our committee, and they have not been provided for, and perhaps now it would be well to add the following section, to be numbered Section 17, which I will read myself. (Reading) "Members of the First Legislative Assembly provided for by this constitution shall be elected at the same time as is provided herein by ordinance for State and County officers, and shall qualify and enter upon the duties of their office at the date upon which they shall be convened in Legislative Assembly by proclamation of the Governor of the State."

Mr. Buford of Madison: I move the adoption of the section.

The motion was seconded.

Mr. Kanouse of Meagher: I would suggest, Mr. Chairman, that the latter part of that is in the nature of a repetition of this article on legislative departments, which provides, "That the First Legislative Assembly shall meet upon the proclamation of the Governor, after the admission of the State into the Union, upon a day to be named in said proclamation, and which shall not be more than fifteen nor less than ten days after the admission of the State into the Union."

Mr. Knowles of Silver Bow: Now, there is no provision in there for electing them at the same time as these other officers, and there is no provision for them to qualify.

Mr. Kanouse of Meagher: I think the Committee on Schedule have drawn a provision which will apply to that, although it is in the nature of a repetition of what is here. I think it is a matter for the Committee on Revision to determine which particular portion ought to be omitted.

Mr. Knowles of Silver Bow: There are two particular propositions in this, and that is the date providing the time they shall be elected, and the time they shall qualify. Now, as you read that article, there is nothing there as to the time they shall be elected, or the time they shall qualify; but the time they shall convene you have provided for in that article.

Mr. Kanouse of Meagher: The time they shall convene and their duties are all covered by this provision.

The Chair put the question on the adoption of said Section 17, and a vote being taken the same was declared carried.

Mr. Knowles of Silver Bow: I have an additional section, to be numbered Section 18. "The District Judges and Clerks of the District Court shall qualify and enter upon the duties of their respective offices within ten days from the date that the State shall be admitted into the Union." I move the adoption of that section. It was thought by the committee at the time we were together that it should provide how long the term of office should be for those first elected.

The motion was seconded.

Before the above motion was put to the committee and after some aimless rambling and desultory discussion, Mr. Callaway moved that the Committee of the Whole rise, report progress, and ask leave to sit again.

The motion was seconded, put to the house, and declared carried.

IN CONVENTION.

President Clark in the Chair

The convention was called to order

Mr. Chessman of Lewis & Clarke: Mr. President, your Committee of the Whole have had under consideration Proposition No. 38, have made some progress and ask leave to sit again.

The President: The Chairman of the Committee of the Whole reports that the sommittee have had under consideration Proposition No 38, report progress and ask leave to sit again. If there be no objection, leave will be so granted.

Mr. Mayger of Lewis & Clarke. I move that the convention take a recess until two o'clock.

The President. Before that motion goes before the house, I desire to state that the Chairman of the Judiciary Committee was called home by the illness of one of his children. He was appointed with two other members to assist the Committee on Revision and Phraseology. It is probable he will be absent several days. The Chair will appoint Governor Carpenter from Lewis & Clarke to take his place.

Mr Cooper of Gallatin: The Committee on Apportionment are now ready to make their report.

The President· Will the gentleman withdraw his motion for the purpose of receiving the report?

Mr. Mayger of Lewis & Clarke: Yes sir.

The President: The Clerk will read the report of the Chairman of the Committee on Apportionment and Representation.

The Clerk read as follows:

PROPOSITION NO. 40.

Article on Apportionment and Representation Introduced by Committee on Apportionment and Representation, Walter Cooper, Chairman.

(General File No. 337.

Congressional Representation.

Section. 1. One Representative in the Congress of the United States shall be elected from the State at large the first Tuesday in October in 1889, and thereafter at such times and places, and in such manner as may be prescribed by law When a new apportionment shall be made by Congress the Legislative Assembly shall divide the State into congressional districts accordingly.

Section 2. The Legislative Assembly shall provide by law for an enumeration of the inhabitants of the State in 1895, and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for representatives on the basis of such enumeration according to ratios to be fixed by law.

Section 3 Representative districts may be altered from time to time as public convenience may require. When a representative district shall be composed of two or more counties they shall be contiguous, and the district as compact as may be. No county shall be divided in the formation of representative districts.

Section 4. Whenever new counties are created, each of said counties shall be entitled to one Senator, but in no case shall a senatorial district consist of more than one county.

Section 5. The senatorial districts of the State shall be constituted and numbered as follows· The county of Beaverhead shall constitute the first district, and be entitled to one Senator. The county of Madison shall constitute the second district, and be entitled to one Senator. The county of Gallatin shall constitute the third disrict, and be entitled to one Senator. The county of Jefferson shall constitute the fourth district, and shall be entitled to one Senator. The county of Deer Lodge shall constitute the fifth district, and be entitled to one Senator. The county of Missoula shall constitute the sixth district, and be entitled to one Senator The county of Lewis and Clarke shall constitute the seventh district, and be entitled to one Senator. The county of Choteau shall constitute the eighth district, and be entitled to one Senator. The county of Meagher shall constitute the ninth district, and be entitled to one Senator. The county of Silver Bow shall constitute the tenth district, and be entitled to one Senator. The county of Custer shall constitute the eleventh district, and be entitled to one Senator. The county of Yellowstone shall constitute the twelfth district, and be entitled to one Senator The county of Dawson shall constitute the thirteenth district, and be entitled to one Senator The county of Fergus shall constitute the fourteenth district, and be entitled to one Senator. The county of Park shall constitute the fifteenth district, and be entitled to one Senator The county of Cascade shall constitute the sixteenth district, and be entitled to one Senator.

Section 6. Until an apportionment of representatives be made in accordance with the provisions of this article they shall be divided among the several counties of the State in the following manner: The county of Beaverhead shall have two (2). The county of Madison shall have two (2). The county of Gallatin shall have two (2). The county of Jefferson shall have three (3). The county of Deer Lodge shall have seven (7). The county of Missoula shall have five (5). The county of Lewis & Clarke shall have eight (8). The county of Choteau shall have two (2). The county of Meagher shall have two (2). The county of Silver Bow shall have ten (10). The county of Custer shall have two (2). The county of Yellowstone shall have one (1). The county of Fergus shall have two (2). The county of Park shall have two (2). The county of Cascade shall have two (2). The counties of Dawson and Cascade shall have one (1) jointly. The counties of Deer Lodge and Beaverhead shall have one (1) jointly. The counties of Jefferson and Gallatin shall have one (1) jointly.

The President: What is the pleasure of the convention?

Mr. Hershfield of Lewis & Clarke: I move to refer the report to the printing committee with instructions to print.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried

The President: The motion now is to take a recess until two o'clock.

Mr. Middleton of Custer: Before that motion is put, I would like to ask if it is the sense of the convention that these matters, after coming from the Committee on Revision and Phraseology, shall be again printed before they are finally acted upon by the convention. It has been suggested that that be done, although it seems to me useless and a great expense, and certainly a delay.

The President: The Chair would suggest that it might be printed in the form in which it is finally printed for distributon.

Mr. Warren of Silver Bow: I make a motion to that effect that the constitution as passed upon by the Revision Committee be printed.

The motion was seconded.

Mr. J. K. Toole of Lewis & Clarke: I would like to make a suggestion. I believe the Revision Committee can do their work much more satisfactorily otherwise, but inasmuch as there will be many copies of this constitution printed for distribution, it might be well to suggest to the printer to keep his form standing, so that it may be altered or modified in such way as to save resetting it again. I move that be done.

Mr. Hickman of Madison: I hope that the convention will not take any steps that will tend to delay. We have been here now over forty days, and we want to get home; and if it is going to detain the members from the outside, I would object to it.

Mr. Burleigh of Custer: I hope the consideration of this matter will go over until after dinner, so that we may ascertain how much time it is going to take to get the printed copies before the convention.

Mr. Warren of Silver Bow: I will withdraw the motion until after the recess.

The Chair put the question on the motion to take a recess until 2 P. M., and a vote being taken, the same was declared carried.

RECESS.

Wednesday, August 14, 1889. 2 P. M. Afternoon Session.

The convention was called to order by the President.

The Clerk called the roll.

Mr. Kennedy asked to be excused until Saturday at 2 o'clock.

Mr. Bickford of Missoula: Mr. Ramsdell wished to be excused for the day.

The President: If there be no objection, these gentlemen will be excused.

Mr. Carpenter of Lewis & Clarke sent up a report of the Special Committee on Memorial No. 2.

The President: The report of the Special Committee will be received and read by the Clerk.

The Clerk read as follows: To the President of the Convention: The Select Committee to whom was referred Memorial No. 2 hereto annexed, respectfully reports that it has considered the same and recommends that said memorial be amended so as to read as follows: "This convention respectfully calls the attention of the Secretary of the Treasury to the fact that a ruling of the Treasury Department, under which imported ore, more valuable on account of the silver than the lead which it contains, is admitted free of duty, operates very injuriously to the mining interests of Montana, through the annual importation, duty free, of lead in the ore of the value of several millions of dollars to compete with the American product. This convention respectfully suggests that it was not intended by Congress to permit the importation of an immense quantity of lead free of duty, and that said ruling, even if complying with the law, does not express the true spirit of the act of Congress imposing a duty upon lead ore; and this convention respectfully asks that said ruling, if the principle of legal construction will permit, be so modified as to follow the true spirit of the law, and require a duty of one and one-half cents per pound to be paid upon all imported ore containing such a percentage of lead as would, if admitted free of duty, tend materially to interfere with the mining interest of our own country." And that, so amended, it be adopted by this convention.

(Signed) B. P. CARPENTER, Chairman.

Mr. Warren of Silver Bow: I move the adoption of the report of the committee, and also of the memorial.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

Mr. Carpenter of Lewis & Clarke: I will now move that the President of this convention transmit a certified copy of the memorial to the Secretary of the Treasury.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The President: There is a report by the Chairman of the Committee on Suffrage. If there be no objection, it will be received and read.

The Clerk read as follows: Mr. President: Your Committee on Rights of Suffrage, to whom was submitted Proposition No. 39, introduced by Carpenter, beg leave to report that they have considered the same and report it back with the recommendation that it do pass.

(Signed) L. ROTWITT, Chairman.

The Clerk read the resolution of Mr. Carpenter of Lewis & Clarke, referred to in the above report, as follows: Proposition relating to the constitution. Section .... Upon all questions submitted to the vote of the taxpayers of the State or any political division thereof, women who are taxpayers and possessed of the qualifications for the right of suffrage required of men by this constitution, shall, equally with men, have the right to vote.

Mr. Collins of Cascade moved the adoption of the report of the committee on said resolution.

The motion was seconded.

The ayes and nays were called for on the motion

The Chair announced that, there being no objection, the ayes and nays would be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Breen, Browne, Bullard, Burleigh, Burns, A. J.; Callaway, Carpenter, Cauby, Chessman, Collins, Cooper, Fields, Gillette, Goddard, Hatch, Hickman, Hobson, Joy, Kanouse. Knippenberg, Knowles, Loud, Luce, Mc Adow, Myers, Parberry, Rotwitt, Rickards, Sargent, Toole, J. K.; Warren, Watson, Witter, Mr. President—34.

Nays: Aiken, Buford, Burns, A F.; Cardwell, Courtney, Craven, Durfee, Dyer, Eaton, Gaylord, Gibson, Craven, Hammond, Hartman, Haskell, Hershfield, Hogan, Marrion, Marshall, Mayger, Middleton, Mitchell, Reek, Schmidt, Whitehill, Winston—26

Absent: Bickford, Brazleton, Burns, Ed; Conrad, Dixon, Joyes, Kennedy, Kohrs, Maginnis, Muth, Ramsdell, Robinson, Stapleton, Toole, J. R; Webster—15.

The Chair announced the motion carried.

Mr. Callaway of Madison: I move you now, that the vote by which that resolution carried be reconsidered, and that that motion be laid upon the table.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The Chair announced that the resolution offered by the gentleman from Lewis & Clarke (Mr. Carpenter) had been adopted as a part of the constitution of the State of Montana.

Mr. Middleton of Custer: The Committee on Engrossment and Enrollment desire to make the following report:

The Clerk read the said report, as follows:

Mr. President: Your Committee on Engrossment and Enrollment, to whom were referred Propositions Nos. 18, 33 and 36, beg leave to report that they have compared the engrossed copies with the originals and find each of said propositions correctly engrossed.

(Signed) MIDDLETON, Chairman.

The President: If there be no objection, the report of the committee will be received.

Mr. Warren of Silver Bow: In connection with the printing of the different articles just passed by the convention and which are now in the hands of the Committee on Revision and Phraseology, I will state that it is very doubtful if they could have printed what we would require in less than a week.

Mr. Middleton of Custer: I would say, in that connection, Mr. President, that the Chairman of the Committee on Printing being absent this morning, it devolved upon myself to ascertain how quick this could possibly be done. The "Independent" office told me they could not get it out in less than a week and perhaps ten days. The "Journal" office state they could possibly get it up in six days, and it would probably be eight or ten days before it could be put in the hands of the convention. In view of that fact, it seems to me that it would be a great delay for this convention to pretend to have this matter reprinted before it is finally adopted by the convention.

The President: I believe the convention had under discussion the reports of the Committee on Revision and Phraseology, and the question of printing was considered and postponed. It is now stated by the Chairman of that committee that it would be impossible to get this done in time.

Mr. Cooper of Gallatin: I would like to inquire if the Committee on Revision and Phraseology have kept their work up as far as it has been engrossed.

Mr. Warren of Silver Bow: I would say that there has been no formal meeting of the Committee on Revision and Phraseology as yet. The different subjects so far printed have been referred to the Chairman of the committee who went through and corrected it, and there were different members of the Revision Committee who went over it afterwards, and I would say that everything up to now has been gone over not less than three times by some member of the committee or the Chairman of the committee in which it originated; and about the only thing to be considered in connection with it is the conflict of articles, which could be read over in the full committee and wherever a conflict appears it should be reported. I think we can do the work in one day anyhow.

Mr. Callaway of Madison: I ask unanimous consent of the convention to recur to Proposition No. 13, article on boundaries. Section one reads "The boundaries and jurisdiction of the State of Montana shall be as follows, to-wit". The legal proposition has arisen as to whether we ought not to exclude the words "and jurisdiction", and after consulting with a number of lawyers and judges on this question, I am satisfied that the words "and jurisdiction" should be stricken out, for the reason that we have Indian reservations in Montana and the United States government has exclusive jurisdiction over the reservations. Therefore, I move to pass the article by unanimous consent, omitting the words "and jurisdiction". I talked with the Chairman of the Judiciary Committee and other gentlemen, and I am of the opinion that those words are wrongfully in this proposition.

The President: Are there any objections to the gentleman recurring to this subject?

Mr. Eaton of Park: I only rise to say that this seems to be a legal proposition, but as a matter of fact that amendment was offered originally and identically for the reason that the gentleman now offers it. Of course, if legal rights have brought their knowledge to bear and are now of a different opinion, I suppose it is all right; but it seems very strange that when the same thing was offered at the time, it has taken all this time to arrive at this conclusion.

Mr Knowles of Silver Bow· I would state that at the time this was taken up, this communication from the War Department in relation to the Military Reservations, and after that was presented it modified the opinion of the lawyers The constitution, or the article, as it now reads, provides for a jurisdiction that we have conceded and relinquished, and we had better, as far as we can, keep any conflict out.' If we leave that in it will raise the question that there is a conflict in the constitution.

Mr. Callaway of Madison· I move that the words in the first line of Proposition No. 13, "and jurisdiction", be stricken out.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried

Mr Rickards of Silver Bow· I would like to ask, inasmuch as this amendment has now been adopted, whether it will be necessary to adopt the original proposition as amended

The President. I think the ayes and nays ought to be taken on this, inasmuch as it is a part of the constitution. The ayes and nays will be entered on the journal.

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Bickford, Breen, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J., Callaway, Cardwell, Carpenter, Cauby, Chessman, Collins, Conrad, Cooper, Courtney, Craven, Durfee, Dyer, Eaton, Fields, Gaylord, Gibson, Gillette, Goddard, Hogan, Joyes, Joy, Kanouse, Knippenberg, Knowles, Kohrs, Loud, Luce, Marrion, Marshall, Mayger, McAdow, Middleton, Myers, Parberry, Reek, Rotwitt, Rickards, Sargent, Schmidt, Toole, J. K.; Warren, Watson, Whitehill, Winston, Mr President—61.

Nays: None.

Absent. Brazleton, Brown, Burns, E.; Dixon, Kennedy, Maginnis, Mitchell, Muth, Ramsdell, Robinson, Stapleton, Toole, J. R.; Webster, Witter—14.

The President. The motion prevails and the proposition as amended becomes a part of the constitution of the State of Montana.

Mr. Middleton of Custer. I move you that the Committee on Revision, etc.. be instructed to make the amendment in the enrolled copy.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried

Mr Hickman of Madison There appears to be nothing before the House, and I ask now whether we could not relieve the Committee on Schedule and let us out of our difficulty about the district offices, etc.

The President· The Chair would state to the gentleman that this can only be done by unanimous consent

Mr Knowles of Silver Bow I would say this: I do not see exactly how we are to get out of the trouble except by unanimous consent. Here the first bill that was passed was the executive, and that provided that all executive officers should go into office immediately after the admission of the State into the Union. Now, that is perfectly proper that that should be There is going to be a Legislature conveened, and they will adopt the laws of the State, and the Governor that is elected by the people ought to be the Governor of the State and not a Governor that is appointed by the President; and this last one that was passed yesterday provides that all State and county and township officers shall go in on the first Monday in January Well, now, the Governor is a State officer. And then, they do not say anything about District Judge there We could probably rectify that. The Clerk of the District Court is a county officer and if he does not go in until the first of January, why, you cannot provide for the District Judge going in any sooner than that, because he would have no Clerk of his court, and we had better get together here two or three committees and then get unanimous consent to straighten it out There is no provision made for a canvassing committee—who shall canvass the votes—who shall issue their certificates of election. There is nothing of the kind provided. Then if the Territorial officers continue and perform all the duties until the first of January there ought to be some provision in the constitution for paying them something, and the Clerks of the District Courts, and so on. I think that the Executive Committee took the right view of this thing, that all of these officers ought to go in just immediately within a week or ten days, after the proclamation of the President—the whole ticket except the County Treasurer, that is the only one that ought to be excepted; that is my judgment about it. Here are two statutes, conflicting, and if we try in the schedule to rectify them, we have got to provide for canvassing them, and then we have to provide that they cannot take their seats until the first of January, and provide a salary in payment. I think if the committee could get together they might harmonize it.

Mr. J. K. Toole of Lewis & Clarke: I will offer this, Mr. President, as an independent section, to go into the schedule.

The President: By unanimous consent, the Chair will entertain the motion of the gentleman.

Mr. Craven of Lewis & Clarke: I ask to be excused for the day.

The President: The gentleman will be excused.

The Clerk read the section offered by Mr. Toole of Lewis & Clarke as follows: "All officers elected at the first election under this constitution shall qualify and take office immediately upon the admission of the State into the Union, except County Treasurers, who shall qualify and take office on the first Tuesday of March next encuing their election. All officers elected at such first election shall hold their offices as prescribed in this constitution, and until said officers shall qualify and enter upon the discharge of the duties of their respective offices, the officers now performing the duties imposed upon the officers created by this constitution shall continue in office and perform the duties thereof and receive the same compensation alowed such officers so elected."

The President: The gentleman offers this as an amendment to the article on schedule.

Mr. J. K. Toole of Lewis & Clarke: That was to be added as a section. The effect of that is that all officers provided for by this constitution shall take their offices as soon as the State is admitted into the Union, except County Treasurers. Judge Knowles, who is Chairman of that committee, thinks the canvassing ought to be provided for in a different section. This continues the Territorial officers in office until their successors are qualified.

The President: The Chair understands that this is to be offered as an amendment to the article on Ordinance or Schedule.

Mr. J. K. Toole of Lewis & Clarke: I think it ought to go into the schedule.

The President: The Chair understands that the article on Schedule is now in Committee of the Whole.

Mr. Hickman of Madison: I move it be referred and considered in connection with the Proposition on Schedules.

The President: The convention had under consideration the Proposition in Schedule in Committee of the Whole. It is now in order, if the convention so desire, to resolve itself into Committee of the Whole again.

Mr. Courtney of Silver Bow: I move the convention resolve itself into Committee of the Whole for the consideration of General Orders.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The President called Mr. Chessman of Lewis & Clarke to the Chair.

IN COMMITTEE OF THE WHOLE.

Mr. Chessman of Lewis & Clarke in the Chair.

The committee was called to order.

The Chairman: When the committee rose, we had under consideration a proposed new section, to be numbered Section 18. What is the pleasure of the committee? The proposed section is in the hands of the gentleman from Silver Bow, Judge Knowles.

Mr. Knowles of Silver Bow: It has been impossible for the committee to get together. We have a section which reads: "That the District Judges and Clerk of the District Courts shall qualify and enter upon the duties of their respective offices within ten days from the date when the State shall be admitted into the Union." Now, probably that had better be immediately after the State is admitted into the Union, instead of ten days. I am not prepared to state. There are a great many things in relation to this article which are in doubt. I am not sure that there is any provision yet made about canvassing the votes for electing members of the Legislature. As far as the schedule has gone, that was gone through, and these are additional sections to be added, and my opinion in relation to these matters is that the committee should arise and commit them. They could go to the Schedule Committee, and they can call in other members and try to get this matter fixed up so that it can be reconciled. I make a motion to that effect.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

Mr. Chessman of Lewis & Clarke, Chairman of the Committee of the Whole: Mr. President, your Committee of the Whole have had under consideration Proposition No. 38, have made progress and desire permission to sit again.

The President: The Chairman of the Committee of the Whole reports that they have had under consideration Proposition No 38, have made progress, and desire leave to sit again. If there be no objection, leave will be granted.

Mr. Buford of Madison: I move that Proposition No. 38 be referred to the Committee on Schedule.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried

Mr Hickman of Madison: I move that the convention take a recess until four o'clock in order to give the committee time to give this matter attention.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried, and the convention took a recess until four o'clock P. M. of the same day.

RECESS.

The convention was called to order at four o'clock P. M.

The President in the Chair

Mr. Chessman of Lewis & Clarke: I see that the Committee on Schedule have not finished their work, and there is very little on the President's desk. I move we adjourn.

Mr. Bickford of Missoula: Why not move a recess until eight o'clock this evening. There are many members not living here who are anxious to get through and get home. I move that as an amendment

The amendent was seconded.

The Chair stated the amendment.

Mr. J K. Toole of Lewis & Clarke If the gentleman will withdraw his motion a moment, I desire to say that I have been consulted by some of the members of the Committee on Schedule and I think there are a great many of these matters that ought to go into the article on Ordinance; and I will ask unanimous consent that the vote by which Article No. 33 on Ordinance was passed be reconsidered, and that a select committee of three be appointed to draft and present to the convention such amendments as will cover matters that ought to be embodied in that article, and with the understanding that it shall not be in order to present anything which would change the expressed views of the convention on any section in the ordinance, but simply to add to it such matters as ought to be in it and correct any inconsistencies in any of the sections.

Mr. Myers of Yellowstone: With that understanding, that there is not to be any attempt at changing any material feature in any respect whatever, I shall not object.

Mr. Luce of Gallatin: I would suggest to the gentleman from Lewis & Clarke who was last on the floor that the Committee on Revision—with this last resolution that authorized the appointment of four additional members to that committee, has full authority, if I recollect that resolution, to do exactly what he wants a special committee of three to do.

Mr. Maginnis of Lewis & Clarke: I suggest that there might be a joint meeting of the Ordinance and Schedule committees for this purpose.

Mr. Myers of Yellowstone: I would like to inquire of these gentlemen, if this matter is concurred in, if it will bring up this question of senatorial representation again.

Mr. Maginnis of Lewis & Clarke: No, sir.

The President: The motion made by the gentleman from Lewis & Clarke is to move to reconsider the vote by which the article on Ordinance was adopted, for the express purpose only of making additions thereto, and not to change any of the propositions therein contained.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The President: It is understood by the chair that a committee of three was to be appointed for this purpose.

Mr. J. K. Toole of Lewis & Clarke: My idea was that of a joint committee, consisting of the Committee on Schedule and Committee on Ordinance.

Mr. Witter of Beaverhead: I would ask that the chairman of the Executive Committee be added to those committees.

The President: If there be no objection, the chairman of the Executive Committee will be added to the joint committee consisting of the Committees on Schedule and Ordinance, for the purpose of revision. The question now before the convention is to take a recess until eight o'clock.

Mr. Knowles of Silver Bow: My opinion is, that this committee will not be able to report at eight o'clock.

Mr. Collins of Cascade: Then I move the convention adjourn.

The motion was seconded.

The chair put the question on the said motion of the gentleman from Cascade, and a vote being taken, the same was declared carried.

The convention stood adjourned until Thursday, August 15th, 1889 at 10 A. M.

THIRTY-FIFTH DAY

Thursday, August 15th, 1889.

The convention was called to order by the President at 10 A. M.

The clerk called the roll.

The President: Mr. Winston of Deer Lodge desires to be excused this morning. If there be no objection he will be excused. Mr. Robinson desires to be excused on account of illness. Mr. Con Kohrs of Deer Lodge is absent and desired to be excused for a few days. These gentlemen will be excused if there be no objection.

The Chaplain offered prayer.

The Clerk read the journal of the previous day

The Clerk read the following communication:

"Helena, Montana, August 15th, 1889.

"Hon. Wm. A. Clark, President, and members of the Constitutional Convention:

"You are cordially invited to attend a lawn festival given by the ladies Relief Corps at the residence of Mrs. R. E. Fisk, 319 North Rodney St., Friday evening, August 16th.

(Signed) "Mrs. R. E Fisk, President.
"Women's Relief Corps"

Mr. Warren of Silver Bow: I would like to have a ruling of the chair as to the point made yesterday morning, whether or not a minority of this convention can pass an ordinance.

The President: The chair would state to the gentleman from Silver Bow that there is a provision of the constitution of the United States which provides that a majority of each house shall constitute a quorum to do business. This a rule that is followed in both houses of Congress In the absence of any rule having a different meaning adopted by this convention, the rule will prevail in the constitutional convention, that a majority of a quorum is sufficient to pass upon any bill. We have the sense of this convention upon that subject. There was introduced a resolution by Mr. Winston of Deer Lodge county in discussing the article on Legislative Departments. I believe he introduced an amendment to the report of the committee to the effect that a majority of all the members elected to either house should constitute a requisite number to pass any bill This received so small a vote in Committe of the Whole, and was voted down by so large a majority, that the gentleman did not renew the amendment when the matter was brought up for the consideration of the convention. Hence, the chair would rule, that it being an established law governing both houses of Congress, provided for by the constitution of the United States, and the sense of this convention having been unmistakably in favor of the adoption of that principle, the chair would rule that a majority of a quorum is sufficient to pass any proposition that is before this convention for consideration.

Mr. J K Toole of Lewis & Clarke: I ask unanimous consent to take up and consider the following resolution.

The clerk read as follows: "Resolved, That the time in which the chief stenographer shall file his transcript of the proceedings of this convention in the office of the secretary of the State or Territory, as prescribed in resolution No. 7 of this convention, be, and the same is, hereby extended to the period of one hundred and ten days from and after the adjournment of this convention

Hr. Hershfield of Lewis & Clarke: I object to the consideration of this proposition.

Mr. Callaway of Madison: I would ask the gentleman from Lewis & Clarke what is the object of this resolution?

Mr. J. K. Toole of Lewis & Clarke: It is simply this, that the stenographer informs me that the debates have been extended very much longer than was expected, and that the labor will be so much greater than anticipated that he might not be able to transcribe into long-hand the records of the convention within the time prescribed by the first resolution That it is his purpose to do it just as rapidly as it can be done and to place it with the Secretary of the Territory at the earliest moment practicable, but in the event he should not be able to do so, he simply desires the resolution passed in order that he may be protected, as time seems to be of the essence of the arrangement. That is all, He is not asking for any delay except as a matter of protection in the event it becomes necessary I move the adoption of the resolution.

Mr Hartman of Gallatin seconded the motion.

Mr Hershfield of Lewis & Clarke: The reason of my objection is, that there is one hundred and ten days in addition to the time of the session of the convention, at the salary which the convention assigned to the young man—$15 a day—which would be $1650.

Mr. J. K Toole of Lewis & Clarke· The $15 a day only applies to the time the convention is in session

The chair put the question on the motion of the gentleman from Lewis & Clarke (Mr. Toole) and a vote being taken, the same was declared carried, and the resolution adopted.

The President: The chair is informed that the Hon. L. H. Hole from South Dakota, a member of the South Dakota Constitutional Convention, is present; and if there be no objection the privileges of the floor will be extended to the gentleman.

Mr Middleton of Custer Mr President, the Committe on Engrossment and Enrollment desirce to make the following report.

The President· The clerk will read the report of the chairman of the Committee on Engrossment and Enrollment

The clerk read as follows: Mr President, Your Committee on Engrossment and Enrollment to whom was referred Proposition No. 39, Article on Woman Suffrage, beg leave to report the same back correctly enrolled

(Signed) MIDDLETON, Chairman.

The President: If there be no objection, this will be received and referred to the Committee on Revision and Phraseology.

Mr Maginnis of Lewis & Clarke Mr. President: On the part of the Special Committee, I am intructed by the gentlemen of the committee, composed of the members of the Committees on Schedule and Ordinance, to make the following reports· We have not changed in any manner any matter passed upon by the convention, but we have divided the ordinance into two articles· One, the article or ordinance on election, that being temporary in its character and referring only to the next election; and second, the article on federal elections, which being permanent in its character, we have embodied in a separate article. We beg leave to present our report.

The Clerk read the said report as follows·

ARTICLE.................

Ordinance on Federal Relations

BE IT ORDAINED, First: That perfect toleration of religious sentiment shall be secured and that no inhabitant of the State of Montana shall ever be molested in person or property, on account of his or her mode of religious worship.

Second: That the people inhabiting said State of Montana do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States. That the lands belonging to citizens of the United States residing without the said State of Montana shall never be taxed at a higher rate than the lands belonging to residents thereof. That no tax as shall be imposed by the said State of Montana or lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein contained shall preclude the said State of Montana from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation; but said last named lands shall be exempt from taxation by the said State of Montana so long and to such extent as such act of Congree may prescribe.

Third: That the debts and liabilities of said Territory of Montana shall be assumed and paid by said State of Montana.

Fourth: That provision shall be made for the establishment and maintenance of a uniform system of public schools, which shall be open to all the children of said State of Montana and free from sectarian control.

Fifth: That on behalf of the people of Montana we, in convention assembled, do adopt the constitution of the United States.

Sixth: That the ordinance in this article shall be irrevocable without the consent of the United States and the people of said State of Montana.

Mr. J. K. Toole of Lewis & Clarke: I suggest that the following be an additional ordinance to go into the article next to the last section.

The clerk read as follows: The State hereby accept the several grants of land from the United States to the State of Montana mentioned in an act of Congress entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States and to make donations of public lands to such States", approved February 22nd, 1889, upon the terms and conditions therein provided.

Mr. Maginnis of Lewis & Clarke: I move the adoption of that as an additional section.

The motion was seconded.

Mr. Luce of Gallatin: I ask the gentleman, why not let it go in in its regular place?

Mr. Maginnis of Lewis & Clarke: Simply because this makes it irrevocable without the consent of the government and we thought it ought to be the last paragraph.

Mr. Luce of Gallatin: There is no requirement in the Enabling Act that this ordinance should be irrevocable. It might save some time engrossing this. I understand these are all engrossed.

Mr. Maginnis of Lewis & Clarke: Well, I have no objection.

The President: Then, if there be no objection, this will be numbered No. 7.

The Chair then put the question on the adoption of the Ordinance, to be incorporated in the constitution.

The clerk called the roll.

The vote stood as follows: Ayes: Aiken, Bickford, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J.; Burns, Edward; Callaway, Cardwell, Carpenter, Chessman, Collins, Cooper, Courtney, Craven, Durfee, Dyer, Eaton, Fields, Gaylord, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Hershfield, Hickman, Hobson, Hogan, Joyes, Kanouse, Knippenberg, Knowles, Loud, Luce, Maginnis, Marrion, Marshall, Mayger, McAdow, Middleton, Mitchell, Myers, Parberry, Reek, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, J. K.; Warren, Watson, Whitehill, Winston, Witter, Mr. President.—63.

Nays: None.

Absent. Brazleton, Cauby, Conrad, Dixon, Joy, Kennedy, Kohrs, Muth, Ramsdell, Robinson, Toole, J. R.; Webster.—12.

The clerk read as follows: Proposition No. 33, Ordinance on Elections. BE IT ORDAINED by the convention assembled to form a constitution for the State of Montana: First: That an election shall be held throughout the Territory of Montana on the first Tuesday of October, 1889, for the ratification or rejection of the constitution framed and adopted by this convention. Second: At said election the constitution framed and adopted by this convention shall be submitted to the people of the Territory for their ratification or rejection, and all persons who are then qualified electors under the laws of this Territory shall be qualified to vote for the ratification or rejection thereof. Third: Said election shall be held at the several places in the several wards and precincts throughout the Territory appointed for the holding of elections under the laws of this Terrtory, and shall be conducted in the manner prescribed by the laws of this Territory regulating elections. The boards of county commissioners of the said counties of this Territory shall appoint judges and clerks of such election in each of said wards and precincts in the same manner as is now required by law for the appointment of judges and clerks of general elections in this Territory. Fourth: Each elector voting at said election shall have written or printed on the ticket he may deposit in the ballot box, the words "For the Constitution" or "Against the Constitution". Fifth: The votes cast at said election for the adoption or rejection of said constitution shall be canvassed not later than fifteen days after said election, or sooner, if the returns from all the precincts shall have been received, and in the manner prescribed by the laws of the Territory of Montana for the canvassing of votes at general elections in said Territory, and the returns of said election shall be made to the Secretary of the Territory, who, with the Governor and The Chief Justice of the Territory, or a majority of them, shall constitute a board of canvassers who shall meet at the office of the secretary of the Territory on or before the 30th day after the election and canvass the votes so cast and declare the result. Sixth: That on the first Tuesday in October 1889 there shall be elected by the qualified electors of Montana a Governor, a Lieutenant-Governor, a Secretary of State, an Attorney General, a State Treasurer, a State Auditor, a State Superintendent of Public Instruction, one Chief Justice and two associate Justices of the Supreme Court, a Judge for each of the Judicial Districts established by this constitution, a clerk of the Supreme Court, and a clerk of the District Court in and for each county of the State, and the members of the Legislative Assembly provided for in this constitution. The terms of officers so elected shall begin when the State shall be admitted into the Union and shall end on the first Monday in January 1893, except as otherwise provided. Seventh: There shall be elected, at the same time one Representative in the fifty-first congress of the United States. Eighth: The votes for all the above officers shall be returned and canvassed as is provided by law, and returns shall be made to the Secretary of the Territory and canvassed in the same manner and by the same board as is the vote upon the constitution, except as to the clerk of the District Court. Ninth: There shall also be elected at the same time the following county and township officers: Three county commissioners, one clerk of the Board of County Commissioners and ex-officio Recorder, one Sheriff, one County Treasurer, one County Superintendent of common schools, one County Surveyor, one County Assessor, one Corner, one Public Administrator, one County Attorney, two Justices of the Peace, and two Constables for each township The terms of office for the above named officers shall begin upon the admission of the State and end upon the first Monday of January A. D. 1893, except as to County Treasurer whose term shall begin on the first Monday in

March succeeding his election and end on the first Monday of March A. D. 1893, and also, as to county commissioners whose terms are otherwise provided for in this constitution. Tenth: The votes for the above county and township officers and for clerk of the District Court shall be returned and canvassed and certificates of election to said officers issued as is now provided by law. Eleventh: Notice of the election for the adoption or rejection of this constitution, and for State, District, County and Township Officers shall be given by the several boards of county commissioners in the same manner as notice of general elections for delegate to congress and county officers is required to be given by the existing laws of the Territory. Twelfth: That the provisions of this ordinance shall apply only to the officers elected on the first Tuesday of October, 1889.

Mr. Maginnis of Lewis & Clarke: I move that the rules be suspended, the amendments made by the Committee concurred in, and the bill placed on its final passage.

The motion was seconded.

Mr. Luce of Gallatin moved to insert the words "polling places" for the word "ward" in section three.

The motion was seconded.

The chair put the question on the said motion and a vote being taken, the same was declared carried.

The chair then put the question on the motion of the gentleman from Lewis & Clarke (Mr. Maginnis) and a vote being taken, the same was declared carried.

Mr. Burleigh of Custer: I desire to ask unanimous consent to offer the following as an addition to Section No. 2.

The President: The gentleman from Custer (Mr. Burleigh) asks unanimous consent to offer a proviso for Ordinance No. 2. The Clerk will read the same.

The clerk read as follows: Proviso for Ordinance 2 on Federal Relations: Provided, That this ordinance shall not be construed to deprive the State of the right to levy a tax upon all personal property owned by any private citizen, person, or corporations which may have been driven or carried upon said reservations for any purpose whatsoever.

Mr. Burleigh of Custer moved the adoption of the said proviso.

The motion was seconded.

Mr. Burleigh of Custer: Now, I desire to state that I have been requested by several gentlemen, taxpayers of Custer County, and of some other counties, to try and make some provision by which personal property that is carried and driven from the counties of this Territory upon these Indian and Military Reservations, may be subject to taxation. It is a notorious fact that property is driven from without the jurisdiction of these counties and they claim that the property is exempt from taxation; and while it is barely possible that there may be some act of Congree requiring that it shall be taxed, yet I do not want any inhibition in our constitution which would prevent our taxing these people. For that reason I offer this proviso, and I think it is a just one. I don't think any man can object to it.

Mr. Knowles of Silver Bow: We considered that question, if the gentleman will remember, in the conceding of jurisdiction over these Indian reservations and Military reservations, and that proviso would clearly allow the taxation of the personal property of Indians, which we have no right to do under the very provisions of the ordinance that we have already established. And then, in relation to military reservations and such places as that, the property that is held by men engaged in the army and by Indians on these different reservations is not to be taxed, and as that provision is there, it would subject them to taxation and it would come in conflict with the Statutes of the United States As a general rule Indians are not taxed and hence they are not allowed to vote; and the constitution provides that they shall not be represented; and I hardly think that we can go on to these Indian reservations and tax property there under the provisions that we have here in some article already adopted. It would be right in conflict with that—right in conflict with what we have declared, that we have no jurisdiction over these matters as a condition of our State government and relinquish it entirely. It is one of the provisions of this enabling act that we should relinquish this jurisdiction and the jurisdiction over the property of Indians upon Indian reservations, and I do not know how you can separate them and provide that we can have no jurisdiction over these Indian reservations for one purpose and then provide for the purpose of taxation.

Mr. Burleigh of Custer. I do not claim that we can tax the property of the United States; it is only property that is driven from within our organized counties here to these Indian reservations on a pretended lease from these Indians; and just before assessment day comes you will find three-fourths of all the stock of Montana rounded upon these Indian reservations. It may require some legislation—(Interrupted).

Mr. Cooper of Gallatin: Do you wish to include any property except movable property.

Mr. Burleigh of Custer: No, only movable property that is brought over there for the purpose of defrauding the State.

Mr. Knowles of Silver Bow: Now, let me say further: The legislature shall provide for the taxation of property of certain individuals. The general rule of law is that personal property follows the residence of the owner of that personal property, and unless otherwise provided by statute, that would be the case. A man residing in Montana Territory who has money deposited in New York can be taxed on that money in Montana Territory. The situs of that money is Montana Territory where the residence of the owner of it is, and we have a provision in our tax law that personal property shall be taxed where it is found in the Territory. But it is so very easy for the legislature to provide that in relation to all of this property where it is upon Indian reservations and military reservations and the parties are residents of Montana that it shall be taxed where his residence is. I think we will get into trouble if we attempt to go on to these Indian reservations and make assessments there, and I think we had better leave that to the legislature to provide for taxation of that property. My own opinion would be that if anybody attempted to run property temporarily out of any one county on to a military or Indian reservation, that it would be subject to taxation in that county, and its real status would be the residence of the owner. It has been frequently adjudicated in relation to the rolling stock of railroads, and that is, that the rolling stock of a railroad is subject to taxation at the home office; and I do not think it is necessary to go in and provide a different proviso in this ordinance in relation to that matter when the matter is subject to legislation.

Mr. Luce of Gallatin: I would like to call the attention of this convention once more to section four of the Enabling Act which provides among other things: "The constitution shall be republican in form and make no distinction in civil or political rights on account of race or color except as to Indians not taxed

This second section which is sought to be amended here is exactly in the language of the Enabling Act, and we have no right here to evade that language or to undertake to construe it, to add anything to it or detract anything from it. The congress of the United States that has enabled us to come together here and frame a constitution has provided what we shall do in respect to that; and I say that any defection from that would be contrary to this Enabling Act and would justify the President of the United States in keeping us out of the Union. We do not want to go deliberately and sow the seeds of our own destruction. Whatever merits there may be in this proviso that ought to be tacked on to this I have nothing to say against it, but the suggestion of the gentleman from Silver Bow, I think, would cover it all. But if you attach it here you then violate the very Enabling Act under which we are framing this constitution. I say that that provision should be left intact as it was intended by Congress. Congress has given us the very words that we are to put in this ordinance We have done so, and we ought to be satisfied with that And then again, the other day we passed this article in relation to military reservations and I think that that ought to cover it. It has a proviso which reads as follows: "Provided, That there be and is hereby reserved to the State the right to serve all legal process of the State, both civil and criminal, upon persons and property found within any of said reservations in all cases where the United States has not exclusive jurisdiction". Now then, if the situs of the property follows the owner of the property and the property is taxed where you find the owner, then I say if the tax is not paid upon that property left within the Indian reservations a process will follow under this proviso to the article on Military Reservations, and I suppose that may include other reservations as well. But, however that may be, I say this proviso should not be adopted here unless you want to defeat this constitution.

Mr. Burleigh of Custer: I say equally it should be attached here. A large amount of property is smuggled out of the reach of the taxing power of the State, and will continue to be unless there is some provision to stop it. I do not want to interfere with the Enabling Act here in the slightest degree, nor do I want to tie the hands of our representatives in Congress. Now, our learned friend from Silver Bow is a gentleman of legal lore. He has been talking a little law to us; now I want to talk a little good common sense to him; and that is this, that I want to provide, and I don't want to exclude ourselves from the right hereafter while this constitution continues from making property here pay equally its portion of the expense of the government. Now, he has enunciated here a principle of law which is very old, that the personal property follows the home of the owner. Very Well; then where is this taxed? In Texas, Illinois, Massachusetts, Maine and Canada and all over the country? It does not follow under the laws of this Territory and should not under the laws of this coming State. It should be taxed where it is found and should be compelled to pay revenue into the county where it belongs. And you establish this principle here and let it go out to the people of the Territory that the property of a citizen living in Yellowstone county, or in Custer county, or in Silver Bow county, even, away up there amongst the mountains where gold flows down like a torrent, and you will find that that property will be stored away amongst the Flatheads or amongst the Crows or some other Indians here until after the time for levying the assessment is past, and then it belongs where it is. Mankind is the same the country over except in a very few localities. Now, if this would endanger the constitution, I would not ask for it, but it is merely providing putting a provision in here that will stand, and instead of meeting with the disapproval of the President, I think it will meet with his hearty approbation. He will say this is another indication of the fitness of this people for self-government. Now, my friend got up, as he usually does, always replete with good sound sense, and yet he didn't come up quite to the mark. They have had more trouble in Custer county by these people fording the Yellowstone River at low water to get out of the reach of the assessors there. than I have the time to enumerate; and I merely suggest this matter to the convention. If I am in error I will yield gracefully to the better judgment of this convention.

Mr. Goddard of Yellowstone: So far as my information goes, I will say that I have investigated that matter to the full extent of my ability, and that I undertook at one time as the counsel for the Board of County Commissioners of our county to collect taxes by suit for Yellowstone county on the property on the Crow Reservation, and it was a signal failure. I advised the Commissioners before I went to argue the case that we could not succeed, for the reason that the Crow Indian Reservation is no part of Yellowstone county, of Gallatin county or Custer county, and the Territory of Montana is as powerless to legislate in relation to the jurisdiction of the Crow Reservation as they are on the Northwestern Territory in Canada, because the Territory has no jurisdiction over the Crow Indian Reservation. Now, so far as the gentleman's argument goes in relation to the retention of the stock, he is mistaken about that It is simply unfounded, because they pay more for the privilege of grazing their stock over there than they would have to pay for taxes if they kept them in the county. Every man pays 50 cts. a head. Every man who has sheep on the Indian reservation pays 10 cts. a head which is more than a tax would be if they would remain in the county; and that is not the reason—for the purpose of evading the tax but for the purpose of getting the privilege of grazing over there which they do not have in the crowded districts down in that section of country. Now, the case I refer to was argued at some length before Judge McCleary, and he decided that stock on the reservation was not taxable in Yellowstone county but he hinted that it might be taxed in Custer County; but I believe that every lawyer in this convention would agree with me that the legislature of this Territory is powerless to legislate in regard to the jurisdiction on the reservation and especially the Crow Reservation, in as much as that treaty with that tribe is different from almost any other treaty I know anything about. So far as I am concerned, I would be very glad if some arrangement could be made, some legislation had, by which all the property of this Territory which is protected by the laws of the Territory should bear its burden of the taxation But to undertake to do a thing of this kind when it is absolutely absurd and ridiculous, is simply acknowledging our ignorance of the law and we would become the laughing stock of everybody in the country.

Mr. Witter of Beaverhead: I rise to a point of order. As I understand, it required unanimous consent to introduce this resolution.

The President: The consideration of the question was had by unanimous consent. There was nothing stated about the debate.

Mr. Witter of Beaverhead: That matter is debatable then. I move the previous question.

Mr. Maginnis of Lewis & Clarke: I suppose we all agree with the purpose of the gentleman from Custer in this resolution. As there is a divergence of opinion as to its effect upon the contract between the United States and the Territory, and as we all hope that when we get a delegation from the State that they will follow the lines of the Delegates —and I am sure I can say for myself and for my successor, Mr. Toole, and for the present delegate, Mr. Carter, that they have all asked to cut down these Military and Indian reservations. I believe that no military reservation should extend but one mile from the flag staff, and I believe the Indian reservations should be cut down to the actual needs of the Indians; and I hope that our delegation in Congress will have the force and power to effect that great boon for Montana. I ask my friend to withdraw the resolution.

Mr. Burleigh of Custer· I will withdraw the resolution.

The President: The ordinance is passed upon, and the next in the order of business is unfinished business.

Mr. Eaton of Park: I move that we go into Committee of the Whole for the consideration of Proposition on Schedules.

The motion was seconded.

The chair stated the motion.

Mr. Collins of Cascade: I understand the proposition on Schedules is in the hands of a Committee and not in the hands of the convention.

The President: The gentleman is correct. I would ask the gentleman what was done with the schedules?

Mr. Knowles of Silver Bow: The committee met, reported progress and asked leave to sit again. We have a lot of amendments that we are trying to put in order so that we may bridge over the difficulties.

The President: It was recommitted for the purpose of having those matters straightened out.

Mr. Knwoles of Silver Bow: It was only the ordinance.

The President: Both were recommitted. The minutes show that Proposition No. 38 was recommitted to the Committee on Schedules. The minutes further read that J. K. Toole asked unanimous consent that Proposition No 33, Article on Ordinance, be reconsidered for the purpose of harmonizing it with the Ordinance on Schedule, with the understanding that the express views of the convention on the Article on Ordinance be not interferred with On motion unanimous consent was granted for the reconsideration The committee on Ordinance, the Committee on Schedule and the chairman of the Executive Committee were made such committee, Is the chairman of that committee ready to report the Article Back again? In order to conform to the minutes, it should show that it was returned back and then taken up by the committee of the whole.

Mr Rickards of Silver Bow: I move we resolve ourselves into Committee of the Whole for the consideration of Proposition No. 40.

The President· There is a motion pending that the convention resolve itself into committee of the whole for the consideration of another proposition.

Mr. Eaton of Park: I understand the chair rules that my motion is still pending. My own personal opinion is, Mr. President, that we had better clean this business up and save these odds and ends. The chairman is about ready to report

Mr. Rickards of Silver Bow: I withdraw my motion

The President: The question now pending before the convention is that we resolve ourselves into Committee of the Whole for the consideration of Proposition No. 38.

Mr. Rickards of Silver Bow· Should we not first have the report of the Chairman of this committee?

The President: The gentleman is correct. The report should be entered on the minutes.

The Clerk read said report as follows: To the Honorable W. A. Clark, President of the Constitutional Convention. Your Committee on Schedule, to whom was recommitted that proposition, would respectfully report that they have considered the matter and do hereby report back the said propostion with the recommendation that the additional sections added to such section in proceedings of Committee of the Whole and Sections 17 and 18 presented herewith be added to said proposition.

(Signed) HIRAM KNOWLES, Chairman.

The President: If there be no objection, this report will be received and filed with the proposition to be considered in the Committeee of the Whole. The question now before the convention is that the convention resolve itself into Committee of the Whole for the consideration of Proposition No. 38.

The Chair put the said question, and a vote being taken the same was declared carried.

IN COMMITTEE OF THE WHOLE.

Mr. Chessman of Lewis & Clarke in the Chair.

The committee was called to order.

The Chairman: The committee had under consideration a proposed section to be numbered Section 18 The proposed section had already been adopted, and we now have Section 17.

Mr. Knowles of Silver Bow: The recommendation is that those two adopted be stricken out. The recommendation of the Committee on Ordinance now covers what was sought to be remedied by these two sections, and so I hope that this will be stricken out, and that these two sections as reported will be adopted.

Mr. Witter of Beaverhead: I ask that the sections as reported by the committee be read.

The Clerk read as follows: Section 17. All territorial, county and township officers now occupying their respective positions under the laws of the Territory of Montana or of the United States of America shall continue and remain in their respective official positions and perform the duties thereof as now provided by law after the State is admitted into the Union and shall be considered State officers until their successors in office shall be duly elected and qualified, notwithstanding any inconsistent provisions in this constitution, and shall be entitled to the same compensation for their services as is now established by law. Provided that the compensation for Justices of the Supreme Court, Governor and Secretary of the Territory shall be paid by the State of Montana.

The Chairman: What is your pleasure?

Mr. Burleigh of Custer moved the adoption of the section.

The motion was seconded.

The Chair put the question on the said motion and a vote being taken, the same was declared carried.

Mr. Hartman of Gallatin: There are two sections which have not been stricken out yet. It seems to me a motion would now be in order to strike out Sections 17 and 18 as adopted for the purpose of allowing these to come in. I move therefore that Sections 17 and 18 as adopted by the Committee of the Whole on yesterday be stricken out.

The motion was seconded.

The Chair put the question on the said motion and a vote being taken, the same was declared carried.

The Clerk read Section 18 as follows: Section 18. The Governor of Montana shall, as soon as the State of Montana is admitted into the Union, issue a proclamation requiring the Legislative Assembly to convene as such at such reasonable times as may be designated in his proclamation.

Mr. Buford of Madison moved the adoption of the section.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

Mr. Eaton of Park: I move that the committee do now arise.

Mr. Craven of Lewis & Clarke: There is a matter which, with the consent of the convention, I would like to bring to the attention of the committee. I think in Section one of the article providing that wherever the word "Territory" or "Territory of Montana" occurs in the statutes the words "State" or "State of Montana" shall be substituted therefor. This provision does not go far enough, for in certain sections of the revised statutes of our Territory we have the term "Montana Territory" as well as the term "Territory of Montana", and that phrase ought to be substituted.

Mr. Knowles of Silver Bow: I think the gentleman is correct

Mr Craven of Lewis & Clarke: I move you, Mr. Chairman, that in line two after the first word "Territory" the words "or Montana Territory" be substituted.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried

Mr Hickman of Madison. I move that when the committee rise the Chairman be instructed to report the article back with the recommendation that it be passed as amended.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

Mr Hartman of Gallatin. I move the committee now rise.

The motion was seconded

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

IN CONVENTION.

President Clark in the Chair.

The convention was called to order.

Mr. Chessman of Lewis & Clarke: Mr. President, your Committee on Proposition No. 38 have had the matter under consideration, have amended it in several particulars, and as amended the committee recommend that it do pass.

Mr. Goddard of Yellowstone: I move that the convention proceed to the consideration of the amendments.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

The Clerk read the amendments offered by the Committee of the Whole as follows: Amend Section one by inserting after the word "Territory' on line four the words "Montana Territory".

Mr. Courtney of Silver Bow moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried

The Clerk read as follows: Amend Section 4 by inserting after the word "shall" on line four the words "except as in this constitution otherwise provided."

Mr Craven of Lewis & Clarke moved the adoption of the amendment.

The motion was seconded.

The chair put the question on the said motion and a vote being taken, the same was declared carried.

The Clerk read as follows: Amend Section 9 by inserting after the word "prosecutions" on line one the word "actions" and by striking out the word "actions" on the same line and inserting in lieu thereof the word "action."

Mr. Craven of Lewis & Clarke moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion and a vote being taken, the same was declared carried.

The Clerk read as follows: Amend Section 11 by adding after the word "State" on the last line the words "of Montana".

Mr. Hickman of Madison moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried

The Clerk read as follows: Amend Section 13 by inserting after the word "files" on line two the word "moneys".

Mr Hickman of Madison moved the adoption of the amendment.

The motion was seconded

The Chair put the question on the said motion, and the same was declared carried.

The Clerk read as follows: Amend Section 15 by striking out the word "States" on line five and insert in lieu thereof the words "State courts."

Mr. Hickman of Madison moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

The Clerk read as follows: Amend the proposition by adding thereto the following, to be numbered Section 17. Section 17. All Territorial, county and township officers now occupying their respective positions under the laws of the Territory of Montana or of the United Seates of America shall continue and remain in their respective official positions and perform the duties thereof as now provided by law after the State is admitted into the Union, and shall be considered State officers until their successors in office shall be duly elected and qualified, notwithstanding any inconsistent provisions in this constitution, and shall be entitled to the same compensation for their services as is now established by law. Provided, That the compensation for Justices of the Supreme Court, Governor and Secretary of the Territory shall be paid by the State of Montana.

Mr. Middleton of Custer. I have an amendment which I wish to offer.

The President: The gentleman from Custer offers the following amendment: Amend Section 17 by inserting after the word "qualified" the following, "as provided by ordinance".

Mr. Goddard of Yellowstone: I move the adoption of the amendment.

The motion was seconded.

Mr. Knowles of Silver Bow: I accept the amendment.

Mr. Rickards of Silver Bow: I do not wish to appear captious about this matter but with all due respect to Judge Knowles, it does seem to me that the wording of this section, inasmuch as there is no exception made, is not altogether proper. How can we make the United States Marshal a State officer? It says "all United States Marshals".

Mr. Knowles of Silver Bow: You are correct about that. Add after "all Territorial officers" the words "the United States Marshal and United States Attorney". He is nothing but a United States Marshal. He might be considered a Territorial officer. But still it ought to go in there so that there will be no dispute about it.

Mr. Luce of Gallatin: I rise to a point of order. There is nothing before the convention. The amendment of the gentleman from Custer County—(interrupted).

The President: That has been accepted.

Mr. Maginnis of Lewis & Clarke: I move we take a recess until two o'clock.

The President: The amendment offered by the gentleman from Custer County as read is an amendment to the amendment offered by the Committee of the Whole. and of course that is now before the convention.

Mr Middleton of Custer: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

The President: The question now is upon the section as amended.

The Chair put the question on the said section, and the same was declared carried.

The President: Section 18 will now be read by the Clerk.

The Clerk read as follows: Amend the proposition by adding the following to be numbered Section 18: Section 18. The Governor of Montana shall, as soon as the State of Montana is admitted into the Union, issue a proclamation requiring the Legislative Assembly to convene at such reasonable time as may be designated in his proclamation."

Mr. Marshall of Missoula: The article that we have adopted on the Legislative Department, Section 6, has a proviso that the first Legislative Assembly shall meet upon the proclamation of the Governor after the admission of the State into the Union upon a day to be named in such proclamation, and which shall not be more than fifteen nor less than ten days after the admission of the State into the Union. I suggest that is sufficient without this extra section. I think there is no necessity of adopting Section 18.

The Chair put the question on the said motion and a vote being taken, the same was declared lost.

Mr. Parberry of Meagher: I move that we take a recess until two o'clock.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared lost.

Mr. Luce of Gallatin: I call for the reading of the last section.

The Clerk read same.

Mr. Luce of Gallatin: I undertake to say that that relates wholly to the Territorial officers; that a United States Marshal is not a Territorial officer, nor is a United States District Attorney. I do not think any exception is necessary.

Mr. Warren of Silver Bow: Mr. President, under the Enabling Act, my understanding is that the United States Marshal will have to be reappointed when Montana comes in as a State, and we would have no authority to say what United States officers should hold office and what should not.

The Chair put the question on the adoption of Proposition No. 38.

The Clerk called the roll The vote stood as follows:

Ayes: Aiken, Bickford, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J.; Burns, Edward; Callaway, Cardwell, Carpenter, Cauby, Chessman; Collins, Conrad, Cooper, Courtney, Craven, Durfee, Dyer, Eaton, Fields, Gaylord, Gibson, Gillette, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Hershfield, Hickman, Hobson, Hogan, Joyes, Kanouse, Knippenberg, Knowles, Loud, Luce, Maginnis, Marrion, Marshall, McAdow, Middleton, Mitchell, Myers, Parberry, Rotwitt, Rickards, Schmidt, Toole, Watson, Whitehill, Winston, Witter, Mr. President—60.

Nays: Warren.

Absent: Brazleton, Dixon, Joy, Kennedy, Kohrs, Mayger, Muth, Ramsdell, Reek, Robinson, Sargent, Stapleton, Toole, J. R.; Webster—14.

The Chair announced the vote and declared Proposition No. 38 carried, and the proposition was referred to the Engrossing Committee.

Mr. Middleton of Custer: I would like to inquire what is the status of the Proposition on Ordinances.

The President: The proposition has been placed upon its final passage and adopted.

Mr Witter of Beaverhead: I move we take a recess until two o'clock.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried.

The Convention took a recess until 2 p. m.

Afternoon Session, 2 P. M.

The convention was called to order by the President.

The clerk called the roll.

Mr. Collins of Cascade: Mr. President, I would like unanimous consent to bring before the convention Proposition No. 27 from the Committee on Revision and call the attention of the convention to Section 17—section 16 of the printed bill and section 17, I think, of the bill as it is. It reads as follows at present: "All property except as in this section provided, shall be assessed in the county, city, town, township, or school district in which it is situated". The debate this morning on the proposition to include Indian reservations brought forth the fact that if we leave this as it is citizens can take across the river or across the line into an Indian reservation moneys and notes and stocks and bonds, and anything that is tangible and keep it from being taxed. So I would like permission to strike out the words "in the county, city, town, township or school district in which it is situated", and then the section would read as follows: "All property in this section provided can be assessed in the manner provided by law." I make that as a motion.

Mr. Kanouse of Meagher: I have prepared an amendment to offer to that section, and would ask the gentleman if it is not his desire to leave the provision in regard to railroad stock in the same shape that it was left in.

Mr. Collins of Cascade: In the same shape.

Mr. Kanouse of Meagher: I will offer this as a substitute for the section then.

The President: The gentleman asks unanimous consent to offer an amendment to Section 17 of Proposition No. 27. The clerk will read the same for information.

The clerk read as follows: "Proposition No. 27. Amend Section 17. The State Board of Equalization shall assess the franchise and rails and rolling stock of all railroads operated in more than one county in the State and the same shall be apportioned to the several counties, cities, towns, townships, and school districts in which any such railroad is located in proportion to the number of miles of railway laid therein. All property except as in this constitution otherwise provided shall be assessed in the manner provided by law."

Mr. Kanouse of Meagher moved the adoption of the amendment.

The motion was seconded.

Mr. Collins of Cascade: It is the same motion as the one I made, but it can be got at a great deal easier by striking out the words "in the counties, township, towns and school districts".

Mr. Knowles of Silver Bow: I would ask leave to amend that by saying "as otherwise provided by law, or as otherwise provided in the constitution."

Mr. Collins of Cascade: I will accept that.

The President: The question will be first put on the amendment offered by the gentleman from Meagher.

Mr. Middleton of Custer: Although I am not particularly anxious that the section should stand exactly as it is, I do not see any good reason for a change unless it might be to place the legislature in a position where it would either provide for one system or the other of taxation. The legislature last winter, after having given this matter considerable attention and looking into not only the statute but the decisions of the Supreme Courts of other States, came to the conclusion that the proper place to assess property was the place where the property was situated; and the first part of Section three of the session laws of last winter provides: "All real and personal property in the Territory (or State) of Montana, except such as is in this section expressly exempt from taxation, shall be listed and assessed with reference to its value and location, on the first day of April preceding the assessment." Now, the amendment to Section 6 of the old statute was to the effect that: "Personal property, except such as is required to be listed or assessed otherwise, shall be listed and assessed where the property is situated." That is practically the language of Section 17 as it now stands. In investigating that matter last winter we discovered that the State of Minnesota had attempted to get a law upon taxation that her Supreme Courts would sustain, that is, wherein they would confirm the title under sold for taxes, and for nearly fifteen years they were unsuccessful in the attempt. But the State of Wisconsin about eighteen years ago enacted a revenue law that her Supreme Court held to be good if it complied with any of its provisions. Minnesota afterwards practically enacted almost verbatim the Wisconsin statute. The Supreme Court of that State has since that enactment sustained the sales under that Statute, and so far as the question raised by Judge Knowles this morning is concerned as to it being a fundamental proposition of law that property is assessed where its owner is, I do not think that that as a proposition of law is true. I know that we had a case in the county from which I came in Minnesota, where a man by the name of Jefferson residing in New York City had been loaning money in Minnesota on real estate mortgages. He had indicated to the tax assessors in New York that he was paying taxes on the matter in Minnesota, but they decided that that did not release him from his obligation to the State of New York. An action was commenced in Minnesota to recover these several assessments, and a judgment was rendered against him for some $16,000 and that judgment sustained by the Supreme Court of Minnesota, upon the theory that the money being in the State of Minnesota, that was the proper place where it should be taxed. The opinion is quite an exhaustive one and settled that principle so far as that provision of the Statute is concerned; and in my judgment the proper place to tax property is not where the owner is but where the property may be found, except as otherwise provided in the Statute, and I do not see any good reason why this amendment should be made.

The chair stated the question.

The clerk read the proposed amendment.

Mr. Hogan of Silver Bow: Now, I for one object to turning back to those propositions. I think if we adopt this mode of procedure we are liable to be here for a long time. Now, I am one that certainly objects to the consideration of this proposition.

Mr. Hickman of Madison made the point of order that the gentleman did not make his objection in time.

The President: The point of order is well taken. The objection to the consideration of a question must be made when the question is first introduced.

Mr. Hogan of Silver Bow: I would have objected to it at the time but I could not find the matter, and as a matter of course a man cannot find every proposition that has been acted upon here for a week. It is not the phraseology or the language in the sentence that he wants to change at all. It is the idea. He wants to make a different and a distinct proposition. Now, that is my understanding. I understood the gentleman to say there was something wrong with the phraseology or that the committee on revision and phraseology had made some objection to it.

The President· The chair understood that the gentleman from Cascade read the amendment that he proposed. The chair is of the opinion that the objection to that amendment would probably be a very difficult and delicate question to decide. The gentleman from Silver Bow (Mr. Hogan) certainly could not object after the gentleman from Cascade (Mr Collins) had read distinctly what he proposed to change and amend; and as the question was under consideration, I suppose that would carry any other changes or amendments that the convention might wish to adopt.

Mr. Burleigh of Custer. It seems to me that this is one of the most important matters that has come before this convention. If I understand the provisions of this proposition, and man—and I will state here that I assign the same reasons here and think they go to the same point which my remark went to this morning—that any man who possesses one or ten million dollars worth of bonds or any other property in this Territory—personal property which is movable—may on the 30th day of March go abroad upon these Indian reservations and spend the first day of April there, the time limited by law, and return there and escape taxation Now, you may say that under the laws of the Territory a man who is guilty of fraud is conveying his property away—removing it from the county—is liable How are you going to prove it? It seems to me that this is one of the most important measures that have come before this convention If this provision stands it will allow any man who has movable property to go off and remain long enough to exempt him from assessment and taxation I hope the committee will go back and amend this thing, and I hope the gentlemen who have any doubts upon the subject in consequence of its dubious character will consider it carefully and cautiously before they act upon it

Mr Knowles of Silver Bow: I am inclined to think that the amendment ought to prevail There are a good many more things about this, when you consider it, that are in its favor, and I think it ought to be left to the legislature to provide how the property should be taxed.

The President: The question is on the amendment offered by the gentleman from Meagher.

Mr. Carpenter of Lewis & Clarke: What is the motion? I can say, gentlemen, on this that on the motion made by the gentleman from Custer this morning my attention was called to this article. While I was not in favor of changing the ordinance on account of the danger of the constitution by any change in it, I still thought there was a great deal of reason in the suggestions made by some of the gentlemen. As to the law of this question, that the situs of property follows the residence of the owner, that is a fiction of law. It seems to me that this constitution changes that rule, which is an arbitrary rule—and equitable rule—it might be said, and that if these sections 16 and 17 of Proposition No. 27 are passed there will be great doubt as to the collection of any considerable tax of personal property in this Territory, because not only cattle, bonds, notes, credits and everything else that is movable in a county like Lewis & Clarke, for instance, could be moved over into Jefferson county at the time of assessment, but there would be no provision of law really for assessing it there, because the owner would not be required to make a return there. The assessors would not know of it or have reason to suspect it was there. It could not be assessed in Lewis & Clarke county, because the owner could truthfully make a return that had not any property here in excess of $500 or $2,000, and so these two sections in operation would defeat the collection of any considerable tax It would place an iron-clad rule in the constitution which could not be broken over by any legislation. Therefore it seems to me that the amendment offered by the chairman of the committee striking out the limitation as to place of assesent, "county, city, town, township or school district", was a very proper one; and while the 17th section might not add much to it, it would be perfectly harmless in expressing the opinions of the convention that all property—anything capable of ownership—should be assessed. Therefore it struck me that the amendment offered by the chairman of the committee was a very proper one and would leave it in the position where all property liable to taxation would at least by action of the legislature be put in such a position that the property could be assessed and the taxes thereon collected.

Mr. Rickards of Silver Bow: I would like to ask for information Does not the amendment offered by the gentleman from Cascade cover the ground fully without the amendment of Mr. Kanouse?

Mr. Carpenter of Lewis & Clarke: It appeared to me so when I heard it.

Mr. Rickards of Silver Bow: And if Mr. Kanouse's amendment was adopted, it would necessitate an entire change.

Mr. Kanouse of Meagher: I didn't understand from the reading of the amendment as offered by the gentleman from Cascade that it fully covered the ground that he intended to cover, but if it does I am willing to withdraw my amendment. I only thought it was more complete. I would like to have the amendment as offered by the gentleman from Cascade read again.

The clerk read as follows: I move to amend Section 17 by striking out in lines one and two the words "in the county, city, town, township or school district in which it is situated", and add after "law" at end of line two the words "except as is otherwise provided in this constitution."

Mr. Luce of Gallatin: About all that I intended to say was that I would like to have the convention have before it both of these amendments because the amendment of the gentleman from Meagher county, as I understand it, comes first, and if the amendment of the gentleman from Cascade should prevail then I should think it would be necessary to strike out in the first line "except as in this section provided", because the exception he has added after "law" would cover all that I would like to get this in shape while we are about it now. I must say I am in favor of this amendment in one way or the other; I am not particular which one prevails, although I think the amendment of the gentleman from Meagher county covers the ground completely, and it seems to me that the amendment of the gentleman from Cascade, if it strikes out the words "except as in this section provided" will cover the entire case.

Mr. Collins of Cascade: I will accept that.

Mr. Kanouse of Meagher: I withdraw my amendment.

The President: The amendment offered by the gentleman from Cascade would read "except as in this section provided".

Mr. Burleigh of Custer: I move its adoption.

Mr. Chessman of Lewis & Clarke: I would like to hear it read as amended.

The clerk read as follows: Section 17. All property shall be assessed in the manner prescribed by law, except as is otherwise provided in this constitution. The franchise, road-way, road-bed, rails and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State Board of Equalization, and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located in proportion to the number of miles of railway laid in such counties, towns, townships and school districts".

The chair put the question on the motion of the gentleman from Custer (Mr. Burleigh) and a vote being taken, the same was declared carried.

Mr. Rickards of Silver Bow: I was going to ask the same question that I asked yesterday. Having amended a proposition that was already passed, will it not be necessary to place the proposition upon its final passage as amended?

Mr Luce of Gallatin: I move to put the proposition as now amended on its final passage.

The motion was seconded.

The chair put the question on the said motion, and a vote being taken, the same was declared carried.

Mr. Maginnis of Lewis & Clarke: In order to avoid the roll call, I move to suspend the rules and put the proposition on its final passage.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried.

Mr. Rickards of Silver Bow: I move the convention resolve itself into Committee of the Whole for the consideration of Proposition No. 40, the article on Apportionment and Representation.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried.

The President called Mr. Goddard of Yellowstone to the chair.

IN COMMITTEE OF THE WHOLE

Mr. Goddard of Yellowstone in the chair.

The committee was called to order.

The clerk read Section 1 of Proposition No. 30, as follows:

Section 1. One Representative in the Congress of the United States shall be elected from the State at large, the first Tuesday in October, in 1889, and thereafter at such times and places, and in such manner as may be prescribed by law. When a new apportionment shall be made by Congress the legislative Assembly shall divide the State into Congressional districts accordingly.

There being no amendment to Section 1, the clerk read Section 2, as follows:

Section 2. The legislative assembly shall provide by law for an enumeration of the inhabitants of the State in 1895 and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for representatives on the basis of such enumeration according to ratios to be fixed by law.

Mr. Warren of Silver Bow sent up an amendment to Section 2.

The clerk read said amendment as follows: Add to Section 2: "And that each senatorial district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and shall remain unaltered until the return of another enumeration or census, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senatorial district except such county shall be equitably entitled to two or more senators".

Mr. Burleigh of Custer: I rise to the point of order that that matter has been disposed of and it can only be introduced here for the purpose of contention and delay.

Mr. Courtney of Silver Bow: While I am a member of this apportionment committee, I certainly agree with that amendment proposed by the gentleman from Silver Bow.

Mr. Eaton of Park: I rise to a point of order. My point of order is that a previous point of order has been made and a decision from the chair has not been rendered.

The Chairman: I think the gentleman from Silver Bow is out of order, but I will indulge him.

Mr. Luce of Gallatin: Section 4 of Proposition No. 19 was passed August 5th 1889. Upon its passage a motion was made to reconsider the vote by which Section 4 was adopted. A motion was made to lay that motion upon the table, and that motion to table was carried. This thing has been forever and forever settled by this convention, and it cannot be amended in this way without unanimous consent, which probably this convention will never get. I think the gentleman's point of order is well taken.

The Chairman: I think, as the proposition offered by the gentleman from Silver Bow is in conflict with the proposition which has already been adopted by the convention, and which cannot be recurred to except by unanimous consent, that the amendment is out of order. The chair will so hold.

The clerk read Section 3 as follows:

Section 3. Representative districts may be altered from time to time as public convenience may require. When a representative district shall be composed of two or more counties they shall be contiguous, and the district as compact as may be. No county shall be divided in the formation of representative districts.

Mr. Warren of Silver Bow: I wish to amend by adding the word "Senatorial", making it read "representative and senatorial districts".

Mr. Burleigh of Custer: I rise to a point of order.

Mr. Warren of Silver Bow: I would like to have a ruling of the chair. The chair can rule, and rule wrong, until we go home.

The chairman: The chair will rule according to his convictions, notwithstanding the opinions of the gentleman

Mr. Rickards of Silver Bow: I rise to a point of order. The question has been raised as to whether the convention should consider this matter without the unanimous consent of the convention. I do not think the chair or any one for that matter can raise the question whether a committee of the whole must give unanimous consent to consider an amendment.

The Chairman: Upon that proposition I will state that I do not think it requires the unanimous consent of the committee of the whole in this matter, but I do believe that the amendments offered by the gentleman from Silver Bow are in conflict with other provisions which have been heretofore adopted by the convention, and are therefore out of order.

The clerk read Section 4 as follows:

Section 4. Whenever new counties are created, each of said counties shall be entitled to one Senator, but in no case shall a Senatorial district consist of more than one county.

Mr. Warren of Silver Bow moved to strike out Section 4.

The motion was seconded.

The chair put the question on the said motion, and the same was declared lost.

The clerk read Section 5, as follows:

Section 5. The Senatorial districts of the State shall be constituted and numbered as follows: The county of Beaverhead shall constitute the first district, and be entited to one senator. The county of Madison shall constitute the second district, and be entitled to one senator. The county of Gallatin shall constitute the third district, and be entitled to one senator. The county of Jefferson shall constitute the fourth district, and shall be entitled to one senator. The county of Deer Lodge shall constitute the fifth district, and be entitled to one senator. The county of Missoula shall constitute the sixth district, and be entitled to one senator. The county of Lewis & Clarke shall constitute the seventh district, and be entitled to one senator. The county of Choteau shall constitute the eighth district, and be entitled to one senator. The county of Meagher shall constitute the ninth district, and be entitled to one senator. The county of Silver Bow shall constitute the tenth, district, and be entitled to one senator. The county of Custer shall constitute the eleventh district, and be entitled to one senator The county of Yellowstone shall constitute the twelfth district, and be entitled to one senator. The county of Dawson shall constitute the thirteenth district. and be entitled to one senator. The county of Fergus shall constitute the fourteenth district. and be entitled to one senator. The county of Park shall constitute the fifteenth district. and be entitled to one senator. The county of Cascade shall constitute the sixteenth district; and be entitled to one senator.

Mr. Maginnis of Lewis & Clarke: I move to amend Section 5 by inserting "The county of Lewis & Clarke shall constitute the seventh district and be entitled to three senators".

Mr. Burleigh of Custer. I rise to the point of order that this matter has been passed, and it is only for the purpose of dissension and discord that the matter is brought up

Mr. Maginnis of Lewis & Clarke: I submit that in every Legislative Assembly in the world points of order are entirely at the discretion of the Chairman, it being with him arbitrary in determining it. I would ask the Chairman if he would like to hear the other side of this point of order?

The Chairman: I will indulge the gentleman, but I will not allow the Convention to go into any extended discussion.

Mr. Maginnis of Lewis & Clarke: If the Chairman is ready to decide there is no necessity for my going on. (Laughter).

The Chairman: The chair will decide the matter out of order.

Mr. Warren of Silver Bow: I move that the section be stricken out.

The motion was seconded.

The Chair put the question on the said motion and a vote being taken, the same was declared lost.

The Clerk read Section 6 as follows:

"Sec 6 Until an apportionment of representatives be made in accordance with the provisions of this article they shall be divided among the several counties of the State in the following manner.

The County of Beaverhead shall have two (2).
The County of Madison shall have two (2).
The County of Gallatin shall have two (2).
The County of Jefferson shall have three (3)
The County of Deer Lodge shall have seven (7).
The County of Missoula shall have five (5).
The County of Lewis and Clarke shall have eight (8).
The County of Choteau shall have two (2).
The County of Meagher shall have two (2)
The County of Silver Bow shall have ten (10).
The County of Custer shall have two (2).
The County of Yellowstone shall have one (1)
The County of Fergus shall have two (2).
The County of Park shall have two (2).
The County of Cascade shall have two (p)
The Counties of Dawson and Cascade shall have (1) jointly.
The Counties of Deer Lodge and Beaverhead shall have (1) jointly
The Counties of Jefferson and Gallatin shall have one (1) jointly.

Mr Myers of Yellowstone: I have an amendment.

Mr. Hershfield of Lewis & Clarke: I have an amendment—To strike out line nineteen, and insert that which I have sent to the desk.

The Chairman: I believe the amendment of the gentleman from Yellowstone is prior to this It will take precedence. The gentleman from Yellowstone offers the following amendment to the section: "In line nineteen strike out Counties and Substitute county". "And after the word Dawson in same line strike out the words "and Cascade". "Also after the word "one" strike out the word "jointly".

The amendment was seconded.

Mr. Haskell of Dawson: I have a substitute for that that will make it shorter.

The Chairman: The amendment of the gentleman from Lewis & Clarke is next in order.

The Clerk read said amendment as follows: "Strike out line nineteen and insert the following: "The Counties of Yellowstone and Dawson shall have one jointly."

Mr. Myers of Yellowstone I would say that my amendment covers the points.

Mr. Haskell of Dawson: I offer a substitute for both amendments.

The Chairman: The amendment of the gentleman from Lewis & Clarke is first in order—"Strike out line 19 and substitute therefor the following: "The Counties of Dawson and Yellowstone shall have one jointly"

Mr. Cooper of Gallatin: Now, Mr. Chairman, in connection with that matter I wish to simply say the Committee on Apportionment have given this matter its most earnest consideration, and that the report of that Committee is practically a unanimous report, or in other words, it is signed by all but one gentleman, one of the Committee being absent. That gentleman, while he objected to signing the report it was not because of any objection to the report as a report, but simply because of an objection that he urged in the matter of his own County, and I do not think if the gentleman was here today he would oppose this report. He might make an effort to get his County considered, but he would not oppose the report. The Committee have looked the matter over very carefully as I have said, and we concluded that if we made any change it would disarrange the whole report and would have to be refused entirely. Dawson County lacks quite a number of votes of having enough to guarantee her one representive. The Committee based their apportionment on 727, and allowed every County a representative for every fraction of 2-3 or more of that number, and we considered that this would be just and equitable to all the Counties. While there are a few fractions left that cannot be utilized because there are no Counties near them that they can be added to make up the requisite 2-3 or 727 votes. We concluded that the report was the best that could possibly be arrived at. I hope the report of the Committee will be adopted.

Mr. Collins of Cascade: I want to say just a few words. The Committee on Apportionment could do nothing else, so far as the Senatorial Districting is concerned, but abide by the action of the Convention, and apportion according to Counties Then the facts stared us in the face that Dawson County had the biggest minority and Cascade County had the next, Cascade's fraction over two is 391. Dawson's fraction is 442. Cascade's is 389, and Deer Lodge next is 368. Jefferson next with 328, I think, and Park next, and Gallatin next. Now, if you would make this apportionment—(Interrupted).

Mr. Maginnis of Lewis & Clarke: What is the ratio of representation?

Mr. Collins of Cascade: 727. If we would make this apportionment at this ratio to each County without combining Counties there would be two representatives to be made up; and if we gave Dawson one representative then the county with the next highest fraction would be entitled to one which is Cascade, and the County of the next highest fraction, Deer Lodge would be entitled to another one, and we could not dispose of as many complications as by that method. By this method we dispose of the matter in a more equitable way, Cascade and Dawson Counties make a voting population of over 800—over 100 more than the ratio. The county of Deer Lodge and the county of Beaverhead make a voting population nearly up to the ratio—over 500—not quite up to the ratio; and the county of Gallatin and Jefferson make a voting population of over 600, nearly up to the ratio. Now, there is no way that I can see that this report can be fixed up any better. If you do away with representation according to votes and give the county of Dawson one member, that is not in accordance with the settled policy of the convention, which is to apportion senatorial districts according to counties, and representative districts according to population. So that Dawson is unfortunately situated in a position that it has not got votes enough, and it must be added to another county. There is not a contiguous county that you can add it to, and if you add it to Yellowstone, it would have enough to vote; and you have got to skip the great county of Custer. As much of Dawson County is on the north side of the Missouri River almost as on the south side, and the population is almost equal.

Mr. Joy of Park: How do you know?

Mr. Collins of Cascade: That is my opinion. And the community of interests is about the same. So that it is as well in all respects to add the county of Dawson, if it has to be added, to the county of Cascade, as any other county in the Territory. Now, if this amendment passes, or any other amendment, then the county of Cascade has got to be provided for, because it has the largest fraction of all.

Mr. Hershfield of Lewis & Clarke: Put that with Deer Lodge

Mr. Collins of Cascade: You cannot very well join Deer Lodge and Cascade, for the very reason that they are divided by an unsurmountable barrier. There is no connection between them, except by a circuitous roundabout way, and that is practically impossible It seems to me that the report of the committee if adopted will settle things about as well as they can be settled. You cannot make an apportinonment so that it will suit all of us. If you leave it the way it is, it is about right.

Mr. Haskell of Dawson: It is most peculiar that no longer ago than last week a member on the floor said distinctly that on one side of the

Missouri River in Dawson County there were less than 50 votes, and that the people would number, I think, less than 150. Now, it is a fact, that if Dawson County is to be attached to the county of Cascade with the distance to be traveled to get there, that county from ours is 575 miles. Now, I desire on the part of Dawson County that the gentleman from Lewis & Clarke will withdraw his amendment for this purpose, that this convention may vote first on the amendment offered by the gentleman from Yellowstone County. So far as I am concerned, I do not stand on this floor for the purpose of proclaiming that which does not belong to us, but in my humble judgment Dawson County as it stands now is entitled to one representative. However, this convention does not agree with me in that respect. Why not then select as the county which we desire to be connected with, the county of Yellowstone? Now, take the votes of these two counties added together and they make 1367. Hence, with the county of Yellowstone and Dawson together there would be 87 votes short of making two representatives. Now, that would not be an injustice on the part of this convention to grant us that, provided you will not give Dawson County one representative. This committee has reported to this convention that the county of Choteau is 212 votes less than the full number, and the county of Custer is 179 short. So that by uniting Dawson and Yellowstone Counties we would be 87 short, and the distance of travel from the county seat of Yellowstone to Dawson County is but 225 miles. If you carry us up to Cascade County out of the world, it would be too expensive for men to travel back and forth. We have a few men in Dawson County that ought to have the privilege of the floor of the House of Representatives of this great State of Montana, and we do not desire this convention to practice what we term injustice in this case. First, if this convention will not give us the representative, then we ask that the moton offered by the gentleman from Lewis & Clarke shall prevail, and attach us to Yellowstone County, provided that the gentleman from Yellowstone has no objection We have always been associated, or have for the last six years, with that county, and our interests are identical. Cascade is so remote that we have not discovered it so far as to know whether our interests are identical with theirs or not, and I will ask my friend from Cascade to let go of us for this once. (Laughter)

Mr. Hersfield of Lewis & Clarke: On the suggestion of my friend from Dawson I will withdraw for the present my substitute.

The Chairman The gentleman withdraws his substitute. The question now is on the amendment of the gentleman from Yellowstone to amend line 19 to read as follows: "In line 19 strike out "counties" and substitute "county", and after the word "Dawson" in the said line strike out the words "and Cascade"; and also after the word "one" strike out the word "jointly". The line would then read "The county of Dawson shall have one representative"

The Chair put the amendment on the said question, and a vote being taken the same was declared lost.

Mr. Hershfield of Lewis & Clarke: I will now renew my motion to strike out line 19 and substitute that which is on the desk.

The Chairman: You have heard the motion of the gentleman from Lewis & Clarke, to strike out line 19 and insert the following "Counties of Dawson and Yellowstone shall have one jointly"

The Chair put the question on the said motion, and a vote being taken, the same was decared lost.

Mr. Hickman of Madison. I offer an amendment to Section 6.

The Chairman: The gentleman from Madison offers an amendment to Section 6, which the Clerk will read.

The Clerk read as follows: Amend by striking out line 21 and inserting in lieu thereof the following: "The counties of Jefferson, Gallatin and Park shall have one jointly."

There was no second to the motion.

Mr. Middleton of Custer: I move you that when the committee rise they report the proposition back with a recommendation that it do pass.

The motion was seconded

The Chair stated the motion.

Mr. Hershfield of Lewis & Clarke: The motion of the gentleman from Madison County had a second and is entitled to be put.

The Chairman: The motion before the House is, that when the committee rise they report the article back. There is a second to the motion of the gentleman from Madison.

Mr Hickman of Madison I will withdraw my motion

Mr Whitehill of Deer Lodge I rise to a point of order, that under our rules the motion does not need to be seconded

The Chairman The motion is withdrawn The question is that when the committee rise it report the article back with the recommendation that it do pass

The Chair put the question on the said motion, and a vote being taken the same was declared carried

Mr Burleigh of Custer I move the committee rise

The motion was seconded

The Chair put the question on the said motion, and a vote being taken the same was declared carried

---

IN CONVENTION.

President Clark in the Chair

The convention was called to order

Mr Goddard of Yellowstone Mr President, the Committee of the Whole have had under consideration Proposition No 40 and report it back with the recommendation that it do pass with the amendments adopted by the committee

The President The Chairman of the Committee of the Whole reports that they have had under consideration Proposition No 40 and report it back with the recommendation that it do pass

Mr Middleton of Custer I move you that Proposition No 40 be now taken up and considered section by section, and placed upon its final passage

The motion was seconded

The Chair put the question on the said motion, and a vote being taken, the same was declared carried

Mr Rickards of Silver Bow I move that the rules be suspended and the reading of the proposition dispensed with, and the proposition be placed on its final passage

The motion was seconded

Mr Burleigh of Custer Upon that motion I demand the previous question

The President' It is moved and seconded that the rules be suspended and Proposition No 40 be placed upon its final passage Upon this the previous question had been demanded The question before the convention is, shall the main question be now put

The Chair then put the said question, and the same was declared carried

The President The question now is upon the Proposition No 40, and the ayes and nays will be entered on the journal That requires a two thirds vote

Mr Collins of Cascade I call for a division of the question

Mr Burleigh of Custer It seems to me this comes too late The previous question has been demanded, after this motion to suspend the rules and it is seconded and ordered

Mr Maginnis of Lewis & Clarke The motion to suspend the rules is entirely one proposition, Mr President

Mr Burleigh of Custer Well, I will withdraw the motion for the previous question until the former is decided

The President The motion then is to suspend the rules for the purpose of taking a vote upon this proposition, with the understanding that it will not require a 2-3 vote upon the proposition, but simply upon the suspension of the rules

Mr Maginnis of Lewis & Clarke I object

The President The gentleman objects to that Will the gentleman state his motion?

Mr Rickards of Silver Bow My motion was that the rules be suspended and the reading of the proposition dispensed with, and the proposition placed upon its final passage

The President The question now is upon the dispensing of the rules and the adoption of the proposition This will require a two-thirds vote

Mr Hartman of Gallatin· I move that the motion of the gentleman from Silver Bow be indefinitely postponed

The President The motion of the gentleman from Gallatin is not in order

Mr Collins of Cascade I ask for a division of the proposition

Mr Rickards of Silver Bow I withdraw my motion

The President The question now before the convention is upon the adoption of the original motion made by the gentleman from Custer that the proposition be considered section by section

The Chair put the question on the said motion, and a vote being taken the same was declared carried

The Clerk read Secton 1

There being no amendments to Section 1 the Clerk read Section 2

Mr Warren of Silver Bow I offer an amendment to Section 2

The President The gentleman from Silver Bow offers to amend by adding to Section 2

The Clerk read as follows Add to Section 2, Proposition No 40 That each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and shall remain unaltered until the return of another enumeration and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senatorial district, unless such county is equitably entitled to two or more Senators

Mr Courtney of Silver Bow I move the adoption of the amendment

Mr Middleton of Custer I rise to a point of order

Mr Maginnis of Lewis & Clarke Before the point of order is taken, I move to strike out the words "aliens and insert "Indians not taxed

Mr Middleton of Custer My point of order is that this relates entirely and substantially to matter that has been passed upon by this convention and can only be reconsidered by unanimous consent It has been provided for in Section 4 of Proposition No 19 on Legislative Departments.

The President Touching the question of order raised by the gentleman from Custer, the Chair is of the opinion that question of order relating to the admissibility of motions, to their adaptability to the question, to their procedure, that is with regard to questions under consideration, and points of order, may be raised to matters of privilege That is not involved in this question, and the Chair is of the opinion that the matter which is sought to be adopted is not within his province to decide That he has no prerogative whatever So far as the character of the matter may be concerned, which is introduced in a resolution or a motion, I desire to call the attention of the members of the convention on this question to Jefferson's Manual We have no rules upon the subject On page 157, under the article "Amendments", it reads as follows "If an amendment be proposed inconsistent with one already agreed to, it is a fit ground for its rejectment by the House, but not within the competence of the Speaker to suppress as if it were against order, for were he permitted to draw questions of consistence within the vortex of order he might usurp a negative on important movements, and suppress, instead of subserving, the legislative will" It is the opinion of the Chair that so far as the matter concerned in any motion which is presented to this convention, he has no prerogative, no power to decide

Mr Middleton of Custer Do I understand, then, that the Chair has no power to prevent a matter being brought in by indirection that could not be reached directly—something that has been acted upon and determined conclusively, and that the same identical matter can be reached by indirection, and that the Chair is powerless to prevent?

The President According to the authority which the Chair has just read, it is within the province of the convention, if they see fit, to reject this proposition or to determine whether or not it is inconsistent with matters that have already been passed upon

Mr Maginnis of Lewis & Clarke It the Chair will allow me, I would say that, as the Chair has well stated, all that his jurisdiction goes to is as to whether the matter has a parliamentary standing This convention has power in case it chose, to make every aritcle of the constitution conflict with each other, and it is not within the province of the Chair to go into that. The only thing is whether it is germane to the question under consideration and properly a part of it, and there is no question as to either of these

Mr Burleigh of Custer I would like to read, with the permission of the gentleman, Barclay's Digest as to the rules of the House of Representatives (Reading) "A motion to reconsider a vote laying a motion to reconsider on the table is in order. If entertained it would lead to inextricable confusion by piling up motion on motion to reconsider."

Mr. Maginnis of Lewis & Clarke: That is very true, but the only question to consider is whether this proposition is germane to the section, and the question whether it conflicts with any or all of the articles cannot be considered by the Chairman.

Mr. Burleigh of Custer: I then move to indefinitely postpone the motion of the gentleman from Silver Bow County.

The motion was seconded.

The Chair stated the motion.

Mr. Maginnis of Lewis & Clarke called for the ayes and nays.

Mr. Burleigh of Custer. I will withdraw my motion.

Mr. Rickards of Silver Bow. Can the motion be withdrawn after the ayes and nays are demanded?

The President: It cannot.

Mr. Collins of Cascade: It is an amendment to an amendment, and an amendment to postpone is certainly an inferior motion.

The President: The question now is upon indefinite postponement of the amendment. I believe the gentleman is correct, that a motion to indefinitely postpone the main proposition is in order, but not the amendment. The Chair sustains the gentleman from Cascade, that the motion to indefinitely postpone is not in order.

Mr. Warren of Silver Bow I move the adoption of the amendment.

The motion was seconded.

The Chair stated the motion.

Mr. Rickards of Silver Bow called for the ayes and nays.

The Clerk called the roll.

The vote stood as follows:

Ayes: Aiken, Burns, A. F.; Burns, A. J.; Burns, Edward; Carpenter, Chessman, Courtney, Durfee, Gillette, Hershfield, Hogan, Knowles, Maginnis, Mayger, Rickards, Sargent, Schmidt, Stapleton, Toole, J. K.; Warren, Mr. President—21.

Nays: Breen, Browne, Buford, Bullard, Burleigh, Callaway, Cardwell, Cauby, Collins, Conrad, Cooper, Dyer, Eaton, Fields, Gaylord, Gibson, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Hickman, Hobson, Joyes, Kanouse, Knippenberg, Loud, Luce, Marrion, Marshall, McAdow, Middleton, Mitchell, Myers, Parberry, Rotwitt, Watson, Whitehill, Witter —40.

Paired: Bickford and Craven, Joy and Muth, Ramsdell and Winston.

Absent: Brazleton, Dixon, Kennedy, Kohrs, Reek, Robinson, Toole, J. R.; Webster—8.

The motion was declared lost.

The Clerk read Section 3.

Mr. Warren of Silver Bow: I have an amendment to Section 3.

The President: The gentleman from Silver Bow, Mr. Warren, moves to amend Section 3 by inserting after the word "representative" the words "and senatorial". It would then read as follows: "Representative and senatorial districts may be altered from time to time."

The amendment was seconded.

The Chair put the question on the said amendment, and a vote being taken the same was declared lost.

The Clerk read Sections 4 and 5.

Mr. Hogan of Silver Bow: I move to strike out Section 5.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared lost.

Mr. Maginnis of Lewis & Clarke: Mr. President, I move that the section be amended so as to read as follows: Lewis & Clarke, three Senators: Missoula, two Senators; Deer Lodge, three Senators; Jefferson, two Senators; Silver Bow, four Senators.

Mr. Rickards of Silver Bow seconded the motion.

Mr. Maginnis of Lewis & Clarke: I think, Mr. President, it would be quite as just as the present arrangement.

Mr. Burleigh of Custer: Mr. President, the gentleman is just joking, and I think when he comes to straighten up here and look his fellow citizens in the face, I think he will say that it is a joke.

Mr. Maginnis of Lewis & Clarke: Does the gentelman from Custer open up a debate here? The gentlemen who represent their constituents here do not care to force a debate.

Mr. Burleigh of Custer: I want to tell one little anecdote and then I will quit.

(Several voices) No, No, No.

Mr. Rickards of Silver Bow I rise to a point of order The motion has been made by the gentleman from Lewis & Clarke, and the Chair is in possession of the motion.

The President· The gentleman from Lewis & Clarke, Mr Maginnis, offers to amend Section 5 as follows: "Lewis & Clarke, 3 Senators, Deer Lodge, 3 Senators, Missoula, 2 Senators; Jefferson, 2 Senators; Silver Bow, 4 Senators" A division of this question has been called for. The question will now be put upon the first proposition. The question is upon the adoption of the amendment—or by the gentleman from Lewis & Clarke to line 5 of Section 5, which contemplates striking out "one" and inserting in lieu thereof "two'

The Chair put the question on the said motion, and a vote being taken the same was declared lost.

The Clerk read as follows "Silver Bow County, 4 Senators '

The Chair put the question on the said amendment, and a vote being taken the same was declared lost

The Clerk read as follows "Lewis & Clarke. 3 Senators."

The Chair put the question on the said amendment, and a vote being taken the same was declared lost.

The Clerk read as follows: "Missoula County, 2 Senators."

The Chair put the question on the said amendment, and a vote being taken, the same was declared lost

The Clerk read as follows: "Deer Lodge, 3 Senators."

The Chair put the question on the said amendment, and a vote being taken, the same was declared lost.

Mr Maginnis of Lewis & Clarke· In order to make a record of this, I move to strike out the section, and on that I call for the ayes and nays.

The President The motion to strike out this question was lost a few moments ago.

Mr. Collins of Cascade: I move to adopt the section.

Mr. Eaton of Park· I rise to a point of order, long since established by this convention, that where a proposition is under consideration, such amendments as are desired are offered and considered, and since amendments have been offered the consideration of the next section is in order without any motion to adopt whatever

The President· The Chair is of the opinion that with regard to several sections we have adopted single sections, and the Chair sees no reason to vary from that rule now. The ayes and nays will be entered on the journal

The Clerk called the roll. The vote stood as follows:

Ayes: Bickford, Breen, Browne, Buford, Bullard, Burleigh, Burns, A. J., Burns, Edward; Callaway, Cardwell, Cauby, Collins, Conrad, Cooper, Dyer, Eaton, Fields, Gaylord, Gibson, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Hickman, Hobson, Joyes, Kanouse, Knippenberg, Loud, Luce, Marrion, Marshall, McAdow, Middleton, Mitchell, Myers, Parberry, Rotwitt, Watson, Whitehill, Witter—43.

Nays: Aiken, Burns, A. F.; Carpenter, Chessman, Courtney, Craven, Durfee, Gillette, Hershfield, Hogan, Knowles, Maginnis, Mayger, Rickards, Sargent, Schmidt, Stapleton, J. K. Toole, Warren, Mr President—20.

Paired· Joy and Muth; Ramsdell and Winston.

Absent: Brazleton, Dixon, Kennedy, Kohrs, Reek, Robinson, Toole, J. R : Webster—8.

Mr. Kanouse of Meagher: I move that the rules be suspended and that further reading of the bill be dispensed with.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken the same was declared carried.

The President: The question now is upon the adoption of the proposition.

Mr. J. K Toole of Lewis & Clarke: I ask leave to change my vote upon this proposition. This is perhaps the last time that I shall trouble the convention, and the matter is of such importance with my immediate constituency that I desire to place on record an explanation of my vote. Mr. President, I am not much given to kicking against the pricks, and generally accept the inevitable as gracefully as I can. I cannot, however, permit this last opportunity to pass without again condemning the senatorial apportionment as unfair to the elections and spirit of our institutions. With due deference to the opinion of others, I affirm that it is at variance with the principles on which State governments are builded and upon which they have been maintained for a century. I will not reiterate or recapitulate the arguments against the injustice of this apportionment. It is taxation without representation in its most flagrant form. It gives a county with 400 voters the same representation as a county of 7000 voters, thereby disfranchising 6600 votes in the latter county. Every elector in this State is entitled to vote and to have his vote counted. If this method of representation is to prevail, the right of suffrage of more than 1-3 of the electors of this State will be destroyed. It will operate as a transfer of political power in the Senate from a majority of a minority. While this power might not be abused, it is such a radical departure from the theory and practice of government of the people and by the people and for the people that I fear it will be constant menace to the rapid settlement and increase of property in the State. I cannot but record this as a pernicious and deplorable violation of fundamental principles which will invite serious opposition to our work. The right to representation according to population—the right of the majority to govern is the keystone to our future greatness. We are a progressive people. Let us not go backward, but hold fast to the doctrine that in the administration of government the majority shall control. Let us press forward in the race for supremacy among the States until standing upon the summit of our ambitions we can see behind us our 41 sister States. I shall vote against this proposition, but shall vote for the constitution because I abhor Territorial government. It is a government conducted and controlled at Washington. It is a government where the interests of our people are not consulted, and where our officers are not responsible directly to the people. In another place I once feebly told the story of our wrongs as a Territory and recounted the maltreatment of Congress as best I could. With this catalogue of grievances so long and so constantly standing before me, I say there is but one alternative, I shall vote for this constitution here and at the polls. If you have determinedly set your faces against the justice of our demands, as I know you have, yielding to the power of superior numbers and nothing else, I will vote for it and trust to the fairness and ability of the first Legislative Assembly to provide for a speedy correction of what I regard as a palpable inequality of representation. (Applause)

Mr. Goddard of Yellowstone: I move that the communication of the gentleman be referred to the Committee on Printing, and that it be circulated as campaign literature.

Mr. Courtney of Silver Bow: I second that motion, Mr. President. I think it is meet and proper that the people of this country should understand this thing exactly. I say this much, Mr. President, with all due respect to these gentlemen here, that I would much rather be a slave to the United States than a slave to a rule of this kind. I do not know that I will go so far as my friend, Mr. Toole, but I will certainly vote against the proposition now. I was here during all the debate and I did not hear one single reasonable argument advanced to sustain his system, and I do believe our people in Silver Bow County are just as deserving of representation as the people over here on the Missouri River. I do not think they are any better, but I have this to say, that I think it is better to have a minority petition than a majority. I think that is the genius of our government, and with my understanding of Democracy and Republicanism, I certainly shall not vote to fasten upon our people the system that is proposed here. I shall vote against it. The gentleman from Custer—(interrupted).

Mr. Eaton of Park: I rise to a point of order. I would like to know what business is before the House.

The President: If a gentleman desires to explain his vote he has a perfect right to do so.

Mr. Courtney of Silver Bow: I ought not perhaps to have the audacity—a man from Silver Bow—to get up and speak in the presence of some of these gentlemen, when, according to their mathematical rule one man down here in Dawson County—(interrupted).

Mr. Haskell of Dawson: Oh, let Dawson County alone.

Mr. Courtney of Silver Bow: —is worth about twenty in Silver Bow County. But I am opposed to it, Mr. President, without wishing to go into any argument or harangue about the matter. All my feelings protest against it, and I shall certainly vote against it.

The President: The ayes and nays will be entered on the journal.

Mr. Haskell of Dawson: I have an amendment.

The President: The gentleman from Dawson offers to amend. The Clerk will read the amendment.

The Clerk read as follows: Amend line 19, Section 6, so as to read "The County of Dawson shall have one."

Mr. Haskell of Dawson: I move the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion and a vote being taken the same was declared carried.

The President: The question now is upon the adoption of Proposition No. 40. The ayes and nays will be entered on the journal.

The Clerk called the roll. The vote stood as follows:

Ayes: Bickford, Browne, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J., Burns, Edward; Callaway, Cardwell, Cauby, Chessman, Collins, Conrad, Cooper, Dyer, Eaton, Fields, Gaylord, Gibson, Goddard, Graves, Hammond, Hartman, Hatch, Hickman, Hobson, Joyes, Kanouse, Knippenberg, Loud, Luce, Marrion, Marshall, McAdow, Middleton, Mitchell, Myers, Parberry, Watson, Whitehill, Witter—43.

Nays: Aiken, Carpenter, Courtney, Durfee. Gillette, Haskell, Hershfield, Hogan, Knowles, Maginnis, Mayger, Rotwitt, Rickards, Sargent, Schmidt, Stapleton, Toole, J. K.; Warren, Mr. President—20.

Paired: Joy and Muth; Ramsdell and Winston.

Absent: Brazleton, Dixon, Kennedy, Kohrs, Reek, Robinson, Toole, J. R.; Webster—8.

The Chair announced the vote and declared the motion carried.

Mr. Callaway of Madison: I move the vote by which Article No. 40 was passed be reconsidered, and that that motion be laid upon the table.

The motion was seconded.

The Chair put the question on the said motion, and a vote being taken, the same was declared carried.

Mr. Witter of Beaverhead: I move you that when this convention adjourn it adjourn to meet next Tuesday at 2 o'clock.

Mr. Buford of Madison: I hope that motion will not prevail. I have business at home that needs my attention, and if we can possibly get through I would like to do so These other gentlemen who live along the line of the railroad have the advantage of us, and I hope the motion will not prevail.

Mr Witter of Beaverhead: I consulted with the Committee on Revision, and it appears that that is as early a time as they can guarantee the work to be finished; and if they could not finish it so as to get away on Saturday—so as to finish the work on Saturday, which I think is impossible according to their idea of it, it is useless for us to remain here and find we cannot complete the work.

Mr. Field of Park: I move to amend by making the time 4 o'clock instead of 2 o'clock Tuesday

Mr. Witter of Beaverhead. I will accept the amendment.

Mr. Hershfield of Lewis & Clarke: On next Tuesday, unfortunately, the Republicans will meet in convention at Anaconda (laughter) and to prolong this convention until next Tuesday would be very inconvenient. There are very many of the members of this convention who will want to go to Anaconda, and that will take up the entire week. I think an adjournment until Monday would be ample time. I move the amendment if it is in order that when we adjourn we adjourn till Monday at 2 o'clock.

Mr. Luce of Gallatin: Now, I understand from members of this Committee on Revision that they will be able to report Saturday; and why we should wait until Monday for that report when the business of members of this convention is pressing at home I cannot understand, and I therefore move to amend that when this convention adjourn it adjourn to 4 o'clock Saturday.

Mr. Hershfield of Lewis & Clarke: I will withdraw my amendment to adjourn to Monday.

Mr. Eaton of Park: I would like an authoritative or definite statement from the Chair of the Committee on Revision, Phraseology and Adjustment. It seems to me there are a great many different opinions here, and it appears to be all second hand, and in order to arrive at any idea I think we had better hear from the Chairman of the committee.

Mr. Warren of Silver Bow: If we take simply the engrossed copies of the bills and articles that come from the committee, those can be corrected and a report made very easily Saturday; but if we go to have the entire constitution typewritten and get it up with some care, it would be impossible to have that done before Monday or Tuesday. If we just take these things as they come to us and simply correct them and interline them and fix the sections, that can be done in one day; but to have the entire constitution typewritten and get it up in some shape, I do not think it can be done before that time.

Mr. Luce of Gallatin: I cannot understand what advantage a typewritten constitution will be to this convention any more than the engrossed articles here.

Mr. Middleton of Custer: As I understand it there is practically no other business to be done by this convention except to finally pass upon this work when it gets back from the Committee on Revision. As to the suggestion that it should be typewritten, that seems to me entirely unnecessary. The whole matter as it stands at the present time is exactly as matters of legislation go into the hands of the Secretary, and it would seem from what the Chairman of the Committee on Revision and Phraseology said yesterday that those matters had been submitted to the Chairmen of the different comitttees, and had been passed upon so far as the phraseology was concerned, and that really nothing remains to be done but putting them together and numbering the articles and sections, and so far as I am personally concerned, it will be absolutely impossible for me to remain. I believe this committee can report this whole matter back Saturday morning and that we can get through Saturday night.

The President: The Chair would suggest to the oonvention that a committee composed of several members of the Judiciary Committee was added to the Committee on Revision and Phraseology for the purpose of examining as to possible conflicting statements in the proposition, and Mr. Carpenter of Lewis & Clarke is now the principle member of that committee, and he will probably give us some opinion in regard to what the views of that committee will be.

Mr. Carpenter of Lewis & Clarke: I can only say, Mr President, that I have been connected with the committee a short time; I think it is impossible for the committee to finish their labors by Saturday morning or Saturday afternoon. Of course the longer time they have the more time they will have to consider it; but I have felt myself in a position of delicacy in taking up this matter because I have been told that there were several members of this convention who desired that the work should be finished Friday or else that the convention should adjourn until Monday or Tuesday. So far as many of the members of the committee are concerned they can stay here and work all the time So far as I am personally concerned it is a matter of perfect indifference. The longer time we have the more consideration we can give, but I think for the convenience of the convention that that committee should report Saturday at 10 o'clock or 2 o'clock or 4 o'clock in the afternoon.

Mr. Burleigh of Custer: I want to ask the gentleman one question: If the addition of any more members to the committee would enable them to get along more rapidly with the business, or have all the force they want.

Mr. Carpenter of Lewis & Clarke: It might be a great assistance, but there is this danger, that discussion in the committee would retard rather than advance the work.

Mr Eaton of Park: It seems to me to be a pretty well settled fact from the information I have that this Committee on Revision will not be able to report until some time during the day on Saturday—that they cannot be ready to report at 10 o'clock in the morning of that day. Now, then, if it be afternoon, or at 4 o'clock or anything like that, it is impossible for this convention to finish up its work then, for the reason that the simple reading of that document from beginning to end will take—I hardly know how long, but it is something of a task—an hour and a half or two hours; the signing of the individual names of the members of the convention thereto will certainly take an hour and a half, and there is all that time taken up, and therefore I think that if this convention adjourns to meet on Saturday next it will simply meet at that time and adjourn over Sunday; and therefore I am opposed to the Saturday adjournment at all; and since some of us do live a little further away, I hope that when we adjourn we will adjourn to meet some time on Tuesday.

Mr. Burleigh of Custer: I would like to ask what objection there is to meeting here on Saturday, say at 2 o'clock, and if necessary to work until 12 o'clock that night to get this matter through. The committee, I understand, will be ready to report at 4 o'clock, and these gentlemen here who have pressing business and want to leave and cannot stay here, it seems to me that they will be willing to work here until late into the night in order to get the work finished.

Mr. Rickards of Silver Bow: We are evidently seeking information. Now, why is it not possible for us to act on some of the propositions already in the hands of this committee, which they are undoubtedly ready to report upon. Why is it necessary for us to wait for all of these propositions to come in a lump? May we not take up some of the propositions? Supposing they have suggested or will suggest an amendment to the proposition on education or the proposition on military affairs, or any other proposition; may not that committee report that proposition back to this body and let us go as far as they have already gone? It seems to me that we might facilitate matters in that way.

Mr. McAdow of Fergus: I hope the convention will conclude to meet Saturday next. I am compelled to go away either Monday night or Tuesday night, and I have got to go out of the Territory. I have been here now for forty-odd days, and I think we can certainly get through, and I do hope that we will not adjourn longer than Saturday anyway.

Mr. Luce of Gallatin: I think if you expect a quorum of this convention present when this convention does adjourn you had better set the time for adjournment some time on Saturday. Now, I have been here and answered to roll call every time, except when I was on a sick bed, and I have not seen my office or my town since I have been here I have some business of importance and I would like to get away. I would like to sign this constitution and have it done and ended, and I do not understand why they want to throw away the time on Saturday. I do not understand why we cannot work on during Saturday into the night. I do not understand why this convention does not want to finish up this work. We have been here, God knows, long enough, and we have a perfect constitution, and let us finish it up and adopt it.

Mr. Collins of Cascade: I hope this motion will be withdrawn, and that we will adjourn until tomorrow morning and finish up the balance of the committee work and then adjourn until 4 o'clock. Now, the Judiciay Committee have got the matter of paying the extra officers in their hands, and they have not met on it yet. There is the matter of the printing also.

Mr. Maginnis of Lewis & Clarke: I move we do now adjourn.

The motion was seconded.

Mr. Collins of Cascade. Before we adjourn I would like to offer a resolution on printing

The President: There are two propositions here that are asked to be read, if the gentleman will withhold his motion to adjourn for a moment.

The Clerk read as follows: Mining. The Legislature may pass laws providing for escapement shafts in all mines in which steam hoists are used, and for safeties and bonnets on all cages and skips used for hoisting and lowering men into the mines; and may pass laws for the proper ventilation of mines.

The President: This resolution is introduced by Mr. A J. Burns of Lewis & Clarke.

Mr. A. J. Burns of Lewis & Clarke: I do not desire to have that resolution referred to any committee. I should like to have it brought before the convention without being referred to a committee There are about 15,000 men or fully 1-3 of the Territory engaged in mining, and they desire some legislation of this kind. I move the adoption of the resolution.

Mr. Luce of Gallatin: I simply want to say that the Legislature may pass such laws without our passing this proposition, and it is entirely unnecessary. I hope the miners will get all the protection in the world from every danger, but I say it is within the power of the Legislature without adopting this to give them that protection and I do not think it ought to be adopted.

Mr. Middleton of Custer: I do not understand this can be done without a suspension of the rules.

The President: Only by unanimous consent or a suspension of the rules.

Mr. Middleton of Custer: I object for the very reason as stated by the gentleman from Gallatin. It is a matter that will have no effect.

Mr. A. J. Burns of Lewis & Clarke. I move that the rules be suspended and the motion be adopted

The motion was seconded.

The chair put the question on the said motion and the same was declared lost.

Mr. Parberry of Meagher: I desire leave of absence.

The President: The gentleman will be excused. The gentleman from Cascade, Mr. Collins, offers the following resolution in regard to printing.

The Clerk read as follows: "Be it ordained: That 20,000 copies of the constitution of the State of Montana be printed for distribution; that a committee of 5 be appointed to prepare an address to the electors of the Territory of Montana to accompany the same, and that said constitution and address be printed together in pamphlet form under the direction of the Committee on Address. Provided that the costs of printing the same shall not exceed the rates now paid for Territorial printing, and the cost is hereby declared to be a charge against the State of Montana."

Mr. Burleigh of Custer: I second the motion, and I desire to say that in entrusting the committee with the publication of this constitution, I hope they will see that no such miserably executed thing as the printed pamphlet of the old constitution shall be sent out to disgrace the State of Montana or to disgrace this convention. I have been somewhat familiar with printing matters and I have never seen a pamphlet, a published document, or anything of the kind so miserably executed and sent out upon such miserable paper as this. Of course I think economy is a goood thing, but it is certainly necessary to have good printing and to have good paper although it may cost a little more.

Mr. Craven of Lewis & Clarke: I will state that I have been informed that the Secretary of the Territory is in correspondence with the authorities at Washington with reference to the printing of the constitution when it is completed, and I think it is well to determine before this resolution is passed the status of that correspondence, and if it will be borne by the United States the State will be relieved of the large expense.

Mr. Watson of Fergus: I hope the convention will pause a little before it adopts this resolution. I think it would be far better to obtain through the printing committee perhaps or some other way an estimate of what this would cost. It seems to be contemplated that we shall get the State or somebody else in an indebtedness of some fifteen or twenty thousand dollars.

Mr. Luce of Gallatin: I think, cost what it will, the people ought to know what we have done here, and there is no other way for them to get that information.

Mr. J. K. Toole of Lewis & Clarke: The resolution provides that it shall not exceed the amount as now provided under the Territorial law for printing.

Mr. Watson of Fergus: I understand that very well, Mr President, but I also understand there is quite a difference between printing a pamphlet in large pica type on book paper, or printing it in newspaper. It will make a difference of several thousand dollars—a good many thousand dollars. I can assure the convention of that.

Mr. J. K. Toole of Lewis & Clarke: I discovered this, that the bill reported by the publishers who have done the printing for the convention is surprisingly small in my judgfent—$234 for the entire printing done by the committee.

Mr. Middleton of Custer: That included the printing of the rolls and all the printing.

The Chair put the question on the said motion and a vote being taken the same was declared carried.

Mr. J. K. Toole of Lewis & Clarke: I move to reconsider the vote, and to lay that motion on the table.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

Mr. Collins of Cascade: I move we adjourn.

The motion was seconded.

Mr. Witter of Beaverhead: I would ask what the object is in meeting here tomorrow morning.

Mr. Burleigh of Custer: To finish up the business

Mr. Collins of Cascade: The Judiciary Committee have a report to make, and we have some other business I will state that if they have a quorum here they can adopt the report of the Judiciary Committee on the extra pay of the clerks, and then adjourn until Saturday at 4 o'clock.

Mr. Eaton of Park I wish to make a preliminary inquiry as to what became of several motions in regard to our adjournment to a day certain.

The President: They were superseded by a motion to adjourn and that was withheld for the purpose of considering resolutions.

Mr. J. K Toole of Lewis & Clarke Before the motion is put I would like to suggest that the Chairman of the Judiciary Committee is absent, and that we had better meet here and consider the matter of this extra expense of the Convention

Mr Burleigh of Custer: I would like to be excused until Saturday.

Mr. Luce of Gallatin: I would like to be excused until 4 o'clock Saturday

The President: The understanding is that possibly the labors of the Convention may be finished on Saturday, and Chair does not like to take the responsibility of allowing excuses. The question now is upon adjournment. With reference to the request of the gentleman from Yellowstone who desires to be excused until Monday, and Chair would like to have the sense of the Convention upon that subject.

Mr. Goddard of Yellowstone. I do not insist upon that, if the Convention will adjourn until Saturday, but I have no idea it will.

The President The question is upon the adjournment.

The Chair put the question on the said motion and the same was declared carried.

The Convention stood adjourned until Friday, August 16, 1889, at 10 A. M.

THIRTY-SIXTH DAY

Friday, August 16, 1889

The Convention was called to order by the President at 10 A M.

The Clerk called the roll.

Mr Craven of Lewis & Clarke Mr. Goddard of Yellowstone wished leave of absence for the day.

Mr. Durfee of Deer Lodge: Mr. Reek desired leave of absence for the day.

Mr. Burleigh of Custer asked leave of absence for Mr. Loud.

The Chaplain offered prayer.

Mr Gibson of Cascade begged to be excused until tomorrow.

Mr. Browne of Choteau likewise asked to be excused until tomorrow.

Mr. Warren of Silver Bow sent up report of the Chairman of the Committee on Adjournment, Revision and Phraseology, which the Clerk read as follows: Mr. President, Your special Committee on Revision with a view of expediting the work of the Convention respectfully report that they have partially performed the work assigned them and recommend as follows; to-wit: That the different propositions contained in the Constitution be arranged in the following order:

First. Preamble.
Second. Article one. Boundaries.
Third. Article Two. Military Reservations
Fourth. Article Three. Declaration of Rights.
Fifth. Article Four. Legislative Departments.
Sixth. Article Five. Executive Department.
Seventh. Article Six Judiciary Department.

Eighth. Article Seven. Rights of Suffrage and Qualifications to hold office.

Ninth. Article Eight. State Institutions and Public Buildings.

Tenth. Article Nine. Education.

Eleventh. Article Ten. Revenue and Taxation.

Twelfth. Article Eleven. Public Indebtedness.

Thirteenth. Article Twelve. Military affairs.

Fourteenth. Article Thirteen. Corporations other than Municipal.

Fifteenth. Article Fourteen. Municipal Corporations and Officers.

Sixteenth. Article Fifteen. Public Lands.

Seventeenth. Article Sixteen. Labor.

Eighteenth. Article Seventeen. Miscellaneous Subjects and Future amendments.

Nineteenth. Article Eighteen. Schedule.

Twentieth. Article Nineteen. Signatures.

Twenty-first. Article Twenty. Ordinances on Federal Relations.

Twenty-second. Article Twenty-one. Ordinance on Elections.

Respectfully submitted,
(Signed) WARREN, Chairman.

Mr. Buford of Madison: I move the adoption of the report.

The motion was seconded.

Mr. Hickman of Madison: I think early in the season Mr. Callaway made the motion that that be inserted right after the Preamble and before the Bill of Rights—The Article on Boundaries be inserted immediately after the Preamble and in advance of the Bill of Rights—The Bill of Rights follows the boundaries.

Mr. Hartman of Gallatin: I will state for the information of the gentleman it does follow the preamble, but it was deemed best by the Committee that the Military Reservations should be included right in the word boundaries, but it does follow the Preamble. First comes the Preamble and then the boundaries.

The Chair put the question on the said motion and the same was declared carried.

Mr. Warren of Silver Bow: In connection with the Revision Committee the Secretary of the Committee has a number of amendments which he desires to submit whenever the House is ready to take them up, and I will move these amendments be considered by the whole Convention and be considered in the Committee of the Whole.

The President: That will come up under the order of unfinished business.

Mr. Middleton of Custer: The Committee on Engrossment and Enrollment desires to make a report.

The Clerk read as follows: Mr. President, Your Committee on Engrossment and Enrollment to whom were referred Propositions No. 38 and 40, Memorial No. 2 for Enrollment, beg leave to report that the enrolled copies thereof have been carefully compared with the originals as amended, and are correctly enrolled.

(Signed MIDDLETON, Chairman.

The President: The Chairman of the Committee on Revision and Phraseology reports that they have a number of articles now ready with the slight amendments and changes to be made, and it has been moved and seconded that these matters be taken up in Convention instead of Committee of the Whole.

The Chair put the question on the said motion and the same was declared carried

The President: If the Chairman of the Committee will present those articles they will be now considered.

Mr. Craven of Lewis & Clarke: I move you that the Committee on Revision, Phraseology and Adjustment be granted permission to set during the further sessions of the Convention and have leave of absence for that purpose.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

Mr. Eaton of Park asked leave of absence, which was granted.

The Clerk read as follows: Mr. President, Your Committee have considered proposition No. 1 on Preamble and Bill of Rights and recommend to strike out heading of Section one and insert in lieu thereof the words "Declaration of Rights. Strike out the word "That" wherever it occurs at the beginning of a section.

Mr. Hogan of Silver Bow moved the adoption of the said amendment.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

The Clerk read as follows: Section 1 line 3 strike out word "that".

Mr. Witter of Beaverhead moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

The Clerk read as follows: Section 3 line 6 strike out the word "that".

Mr. Collins of Cascade moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

The Clerk read as follows: Section 4 line 6 strike out the words "or capacity" and insert before the word "privilege" the word "or".

Mr. Witter of Beaverhead moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

The Clerk read as follows. Section 4 line 18, 19 and 20 strike out the words "or support any ministry or place of worship, religious sect or denomination" and insert "any place of worship or support any ministry, religious sect or denomination".

Mr. Witter of Beaverhead moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

The Clerk read as follows: Section 6 line 5 strike out the word "that."

Mr. Witter of Beaverhead moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

The Clerk read as follows: Section 8 line 4 after the word "shall" insert "in all Courts inferior to the District Court."

Mr. Courtney of Silver Bow moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

The Clerk read as follows: Section 8 strike out after the word "complaint" in line 5 section 8 to and including the word "Court" in line 12 and insert "All criminal actions in the District Court, except those on appeal, shall be prosecuted by information after examination and commitment by magistrate, or after leave granted by the Court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the Court."

Mr. Courtney of Silver Bow moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

The Clerk read as follows: Section 9 line 5 strike out the word "that".

Mr. Courtney of Silver Bow moved the adoption of the amendment.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

The Clerk read as follows: Section 10 line 11 insert the word "facts" in lieu of "fact".

Mr. Witter of Beaverhead moved the adoption of the amendment.

The Chair put the question on the said motion and the same was declared carried.

The Clerk read as follows: Section 12 line 2 strike out the word "such" and insert the word "the"; and in line 3 strike out the words "as may be".

Mr. Courtney of Silver Bow moved the adoption of the amendment. The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

The Clerk read as follows: Section 17 line 3 strike out the word "case" and insent "criminal proceeding".

Mr. Witter of Beaverhead moved the adoption of the amendment. The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

Mr. Middleton of Custer: I move you that these several amendments as read be considered as adopted unless there is objection.

The President: If there be no obection these amendments will be considered adopted as read unless objection is raisd.

The Clerk read as follows: Section 18 line 3 strike out the word "case" and insert the word "proceeding". Section 20 line 2 strike out the word "nor" and insert "or". Also in line 3 strike out "nor" and insert "or". Section 22 line 3 strike out "that". Section 23 line 12 in lieu of "shall not consist of more" insert "shall consist of not more". Section 25 line 10, the Committee recommend that after the word "infringe" the word "upon" be inserted.

The Chairman: There being no objection all these amendments will be considered adopted.

Mr. Bickford of Missoula: I would suggest that in Section 25 that perhaps the sense of the Section might be improved by inserting the word "denizen" after the word "alien". Under the law as defined the class of citizens are divided into three. There are the alien, denizen and citizen, and denizens are defined to be those who are living temporarily in a country, they are not full citizens; and I think perhaps it would be well to unanimously consent that the word "denizens" should go in.

The President: If there be no objection the word "denizen" will be inserted "after the word "alien".

Mr. Hickman of Madison: I would like to inquire if the word "that" is stricken out in every section.

The President: Yes, sir.

Mr. Warren of Silver Bow: I move that this artcle No. 1 be referred to the enrollment and engrossment committee.

The President: If there be no objection this article No. 1 will be referred to the engrossment and enrollment committee. We will now proceed to the amendments offered to the next article.

The Clerk read as follows: Your Committee have considered Proposition No. 9, article on Military Affairs and recommend as follows: In Section 2 insert the words "Legislative Assembly" in lieu of "Legislature." In Sections 3 and 4 change the word "Legislature" to read "Legislative Assembly".

The President: These amendments will also be considered adopted if there be no objection.

The Clerk read as follows: Proposition No. 11 article on labor, insert in lieu of Section 1 as follows: Section 1. "The Legislative Assembly may provide for a bureau of Agriculture, Labor and Industry" to be located at the Capitol, and be under the control of a Commissioner appointed by the Governor subject to the confirmation of the Senate. The Commissioner shall hold his office for four years and until his successor is appointed and qualified. His compensation shall be as provided by law."

Insert in lieu of Section 2 the following: Section 2. It shall be unlawful for the warden or other officer of any State Penitentiary or Reformatory Institution in the State of Montana, or for any State Officer to let by contract to any person or persons or corporations the labor of any convict confined within said institutions.

The President: If there be no objection these amendments will be adopted and Propositions No. 9 and 11 will be referred to the Enrollment Committee to be enrolled.

Mr. Rickards of Silver Bow: I was going to ask simply for information, in a proposition where one section or two sections, as in this case, are stricken out and other sections are substituted in lieu thereof, whether it is not necessary for a vote of this Convention?

The President: By unaniomus consent these amendments may be adopted, and of course the Constitution will be voted upon as a whole at the end The changes that are made are simply in the arrangements and phraseology, and by unanimous consent this may be done. The gentleman from Cascade asks unanimous consent to introduce the following resolution, which the Clerk will read.

The Clerk read as follows: Resolved, That members who are absent when the Constitution is signed in Convention be and they are hereby authorized to sign the same on the blank space left for that purpose, at the office of the Secretary of the Territory, at any time during office hours, within 30 days from the adjournment of the Convention.

Mr Conrad of Choteau moved the adoption of the resolution:

Mr Hershfield of Lewis & Clarke: That is too long a time. It will delay the Constitution going into the hands of the printers if we make that 30 days, and there is no necessity for granting that length of time The gentlemen who are absent can present themselves and sign the Constitution Fifteen days would be abundant, because it would delay the printing of the Constitution, if you make it longer.

Mr Collins of Cascade: I will accept the amendment.

The President: The question is upon the adoption of the proposition The Chair would suggest that this Constitution will probably be printed before that time, and inasmuch as it is to be submitted to the people early in October, it should be printed and sent out as early as possible.

Mr. Middleton of Custer. I do not think from what I hear from the publishers in town that it can be printed in much less than two weeks.

The Chair put the question on the adoption of the said resolution and the same was declared carried.

Mr. Browne of Choteau: I would like to be excused for the remainder of the term. I do not think that I will be able to get back tomorrow.

Mr. Cooper of Gallatin: It seems to me that there have been so many excuses now that there is scarcely a quorum here, and the result will be that it will block the adoption of the Constitution entirely.

The President· The Chair doubted the propriety of passing the resolution because it extends too much encouragement for members to leave, and certainly all the members should be here when the Constitution is signed. The Clerk states there are about 50 members present now. If there are many excuses for indefinite absence the probability is that we will not have a quorum.

Mr. Cooper of Gallatin: I move to reconsider the vote by which the resolution was passed.

The motion was seconded.

Mr. Collins of Cascade· I hope the motion will not carry. My colleague is absent and has been detained on account of very severe sickness and he cannot possibly be here within 10 or 12 days.

The Chair put the question on the motion to reconsider and the same was declared carried.

The President· The motion stands before the Convention as it did when first offered

Mr. Cooper of Gallatin· I move the resolution be laid upon the table.

Mr Collins of Cascade: I will withdraw it for the time being.

The Clerk read as follows· Your Committee have considered Proposition No 13 article on boundaries, and recommends as follows: Section 1 line 5 insert "27th" in lieu of "22nd". Section 1 line 19 in lieu of word "till" insert "to". Section 1 line 23 insert "from" in lieu of second word "of".

Mr Maginnis of Lewis & Clarke: I ask the unanimous consent to strike out the word "commencing" and insert "beginning".

The President· If there be no objection the amendments as reported by the Committee will be adopted and Proposition No. 13 will be referred to the Enrollment and Engrossment Committee.

The Clerk read as follows: Your Committee have considered Proposition No 18 article on State Institutions and Public Buildings, and recommend as follows: In Section 2 strike out first and second lines up to word "at". and in ninth line after Section 2 write "in" with capital "I". Section 5 line 5 strike out the word "other".

The President: If there be no objection these amendments will be adopted and the Proposition referred to Committee on Enrollment and Engrossment.

The Committee on Revision report back Proposition No. 32 without amendment. By unanimous consent before referred to the Committee on Enrollment to be enrolled.

Mr. Warren of Silver Bow: I move that when we take a recess it be until 4 o'clock when the Committee will be ready to report.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

The President: What is the pleasure of the Convention.

Mr. J. K. Toole of Lewis & Clarke: The Chairman of the Judiciary Committee directs me to make the following report for him.

The President: If there be no objection this report will be considered now.

The Clerk read as follows: Mr. President: Your Judiciary Committee to whom was referred Resolution No. 31 and also resolution introduced by Hickman, both relating to pay of extra clerks and employees etc. have directed me to report the same back to the Convention with the accompanying ordinance and resolution relating to the matter and providing for payment of employees, printing expenses, etc.

Dated Aguust 16, 1889.

(Signed) DIXON, Chairman.

WHEREAS, the Act of Congress approved February 22, 1889, under which this Convention has been called, has failed to provide sufficient funds to defray the expenses of the same, and

WHEREAS, it has been found necessary to employ additional officers and incur extra expenditures for a systematic and expeditious transaction of the business of this Convention; therefore be it

ORDAINED, that Three Thousand Three Hundred ($3300) Dollars or so much thereof as may be necessary, is hereby declared to be a charge against the State of Montana for this express purpose of paying the following named officers necessarily incurred in the transaction of the business of this Convention:

Names	Service	Salary Per Diem	Date of Employment	Dates services ceased inclusive	No. of Days	Amount due
John Trumbell	Asst. Chief Clerk	$ 5.00	July 5	Aug. 17	44	$ 220.00
E. C. Garrett	Clerk	5.00	July 6	Aug. 17	43	215.00
John McKay	"	5.00	July 5	Aug. 17	44	220.00
Lee Swords	"	5.00	July 6	Aug. 17	43	215.00
Edward Kerr	"	5.00	July 6	Aug. 17	43	215 00
Henry Bernard	"	5.00	July 6	Aug. 17	43	215.00
Morris Langhorne	"	5.00	July 17	Aug. 17	32	160.00
Willam Taylor	"	5.00	July 6	July 16	11	55.00
William Green	Asst. Serg. Arms	5.00	July 7	Aug. 10	35	175 00
Morris Langhorne	Page	4.00	July 6	Aug. 17	43	172 00
Cornelius Hedges. Jr.	"	4.00	July 6	Aug. 17	43	172 00
Wm. D. Alexander	"	4.00	July 6	Aug 17	43	172 00
C. P. Connolly	Stenographer*	15.00	July 4	Aug. 17	45	675.00
Independent Pub. Co.	Printing					234 20
Sudries						
President Clark	Telegrams					7 77
T. E. Collins	Type Writ.					11.50
Rev. H. E. Clawer	Chaplain	3.50	July 4	Aug. 17	45	157 50
						$3291.97

*And 20 cents per folio for each and every folio transcribed by him of the proceedings of the Convention to be ascertained upon the filing of the same pursuant to the resolution authorizing the same.

RESOLVED, that the Chief Clerk is hereby authorized and required to issue a certificate to each of the employees, and for the expenditures, mentioned in Ordinance No. 34 stating the service rendered and amount due, which certificate shall be duly certified to by the President and Chief Clerk of this Convention and shall be a valid claim against the State of Montana.

Mr. J. K. Toole of Lewis & Clarke: I would state, Mr. President, in connection with that report that it embraces all the expenses of the Convention up to and including tomorrow, with the exception of the amount that will be found to be due the stenographer in addition to his per diem, which will be at the rate of 20 cents per folio for each and every folio of the proceedings of the Convention transcribed in pursuance of the resolution authorizing him to perform that service. The exact amount of course cannot be ascertained until this report is made and filed as provided in the resolution. So that in addition to the per diem of $695 there is added this additional amount as computed and ascertained when the report is filed; that whatever it amounts to may be made a charge against the State. I move the adoption of the Ordinance and Resolution.

The President: The Chair would ask the gentleman from Lewis & Clarke if he has considered the expense of printing the Constitution?

Mr. J. K. Toole of Lewis & Clarke: That amount was provided for in the resolution which was offered and passed yesterday as a separate item That resolution provided for the printing of the Constitution under the direction of the Committee to be appointed by the President, which made it a charge against the State.

The President: The question is upon the adoption of the Ordinance and Resolution. If there be no objection the report will be received and adopted; and question now before the Convention is upon the adoption of the Ordinance.

Mr. Rickards of Silver Bow: I notice Mr. President, in the reading of this report that this claim, or these claims, in the aggregate, constitute a claim against the State of Montana. It has been given out by some that it is in the range of possibility that our Constitution may be defeated In that event what becomes of these claims? Who are the claims against?

Mr. J. K. Toole of Lewis & Clarke: I will state to the Convention that I have prepared a memorial, which I intend to present. I was just about to state that I was going to offer, as soon as this report was adopted a memorial to Congress asking that an appropriation be made to cover all these expenses, which we shall ask anyhow whether the Constitution is adopted or not.

The Chair put the question on the adoption of the Ordinance and the same was declared carried.

Mr. J. K. Toole of Lewis & Clarke: I offer the following memorial.

The President: The memorial to Congress offered by the gentleman from Lewis & Clarke, Mr. Toole, will be read by the Clerk.

The Clerk read as follows: "To the Senate and House of Representatives of the United States of America in Congress Assembled.

Your memorialist the Constitutional Convention of Montana convened and sitting pursuant to an Act of Congress entitled "An Act to Provide for the Division of Dakota into Two States and to enable the people of North Dakota, Montana and Washington to form Constitutions and State Governments, and to be admitted into the Union on an equal footing with the original States. and to make donations of public lands to such State." Approved February 22, A D. 1889, respectfully represents that it has been in session since the 4th day of July, A. D. 1889

That the orderly and expeditious transaction of its business has required an additional clerical and other force not provided for under said Act as construed by the Attorney General of the United States, and the incurring of other necessary expenses in excess of the amount appropriated in said Enabling Act, approximated in the aggregate about seven thousand dollars.

That your memorialists are advised and believe that Congress intended that the whole amount of necessary expenses incurred in holding said Convention should be borne by the United States.

Your memorialist therefore, prays that the sum of seven thousand dollars or so much thereof may be appropriated by Congress to pay such extraordinary and necessary expenses, and your memorialist will ever pray.

Mr. Burleigh of Custer: I move the adoption of the memorial.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carrried.

The President: This should be in the custody of some one to present to a delegate in Congress.

Mr. J. K. Toole of Lewis & Clarke: If it is necessary I move that the Clerk of the Convention be directed to furnish the delegate in Congress an authentic copy of the memorial.

The motion was seconded.

The Chair put the question on the said motion and the same was declared carried.

Mr. Maginnis of Lewis & Clarke: There is a great international exhibition to come off in this country, and two states are seeking the honor. Chicago being a western City and closest to us, and our sister Conventions having adopted some similar resolutions I offer the following;

The Clerk read as follows: Resolved, that this Convention favors the City of Chicago as the place for holding the proposed worlds fair.

Mr. Warren of Silver Bow: I move to strike out Chicago and insert Helena.

Mr. J. K. Toole of Lewis & Clarke: I was about to amend by inserting Anaconda.

The Chair put the question on the adoption of the resolution and the same was declared carried.

The President: The gentleman from Lewis & Clarke, Mr. Maginnis, will be appointed to see that this resolution reaches the proper sources.

Mr. Knowles of Silver Bow: I move we take recess.

Mr. Kanouse of Meagher: The special Committee on Revision have directed me to report Proposition No. 32 on Military Reservations back to the Convention without change.

The President: If there be no objection this report will be received and adopted and the article will be referred to the Engrossing and Enrollment Committee The convention recently fixed the hour to which we should take a recess at 4 o'clock.

Mr. Middleton of Custer: Just a moment. I simply desire for information to ask if it is the sense of the convention that these propositions in which no change is made should be again brought up.

The President: It is not necessary to bring them up at all.

Mr. Warren of Silver Bow: I would suggest in that connection that they be rewritten.

The President: They should be rewritten unquestionably and it might be well for the Revision Committee to turn them over to the Engrossment Committee at once.

The Chair put the question on the motion to take a recess and a vote being taken the same was declared carried.

The convention took a recess until 4 P. M.

---

4 P. M.

The convention was called to order by the President.

The Clerk called the roll.

The President: What is the pleasure of the convention? The Chair will suggest that if the minutes of the morning session were read they could be copied in the journal.

The Clerk read the minutes of the morning session

Mr. Kanouse of Meagher sent up a report of committee.

The Clerk read as follows: Mr. President: Your special Committee on Revision beg leave to report that having considered Proposition No. 19 on Legislative Departments they recommend amendments herewith as follows:

The President: The amendments will be read and if there be no objection will be considered adopted.

The Clerk read as follows: 1st. Section 4, line 15, insert words "odd numbered" after the word "from", and after the word "district": same line, strike out words "numbered odd numbers". Section 4, line 18, insert words "even numbered" after the word "from". After word "districts" line 18, strike out words "numbered the even numbers". Section 2, line 4, strike out the word "is". Section 8, insert word "shall" at end of line. Section 7, strike out words "attorney at law". Section 13, line 1 insert "sessions" in lieu of "session." Section 14, strike out "the" at end of line 1 Section 15, line 4, strike out the words "or surety". Section 15, line 4, strike out the words "or surety". Section 15, line 6, insert "sessions" in lieu of "session". Section 17, line 9, strike out words "in the" before word "State' and insert "under the laws of". Section 16, strike out first 8 lines and insert the following: "Section 16. The sole power of impeachment shall vest in the House of Representatives, the concurrence of a majority of all the members being necessary to the exercise. Impeachments shall be tried by the Senate sitting for that purpose and the Senators shall be upon oath or affirmation to do justice according to law and evidence" Section 24, line 6, strike out the word "to". Section 38, line 4, insert "the" in lieu of "this". Section 46, lines 1, 11 and 15, insert "Legislative Assembly" in lieu of "Legislature". Leave out Section 46 and include it in Proposition on Executive as Section 8. Section 20, line 1, insert the word "every" before the word "law". Section 34, strike out last line of section, being the words "except interest on the public debt"

Mr. Rickards of Silver Bow: I have an indistinct recollection that when that amendment was up there were strong arguments offered here why that amendment should prevail I have a recollection, yet it is somewhat indistinct. Possibly someone may be present who offered that amendment.

Mr. Hickman of Madison: I offered that amendment, from the simple fact that it is often the case that the interest on the public debt has to be paid in New York, the bonds being held there. You do not know exactly how much money you need in New York for the purpose of meeting those coupons when they become due, and if you depend on writing on there and ascertaining how much money you have to pay for a certain number of coupons, why, it is going to hamper matters.

Mr. Maginnis of Lewis & Clarke: Besides that, I would add, Mr. President, securities could never be very well disposed of except some provision was made for the permanent appropriations.

Mr. Kanouse of Meagher. It was the idea of some of the committee that the interest on the public debt was always paid in accordance with some law on the subject, and to that extent that it would not need to be an excepion to the rule with regard to payments made from the Treasury, because it is always in accordance with some provision of law.

Mr. Maginnis of Lewis & Clarke: I am very sure, if the gentleman will read the funding acts of the United States he will see that the interest is made payable by annual appropriations, and if he will look over the appropriation bills he will never see any appropriation for it.

Mr Kanouse of Meagher· That was the view the committee took of it

Mr Hershfield of Lewis & Clarke· If I understand, the convention did not give this committee authority to change any propositions adopted by the convention I made objection at the time that it was unnecessary and that general appropriations are usually made by the Legislature on any accruing indebtedness.

Mr. Callaway of Madison: Mr President, in accord with the gentleman from Lewis & Clarke, Mr Hershfield, I rise to an inquiry as to whether the Committee on Revision and Phraseology are revising and amending our work I do not know the exact extent of their authority; I do not care; but after this convention has gone through Committee of the Whole upon all these propositions and they have been adopted by the convention and referred to this committee for that single purpose. I suggest that while there are some things in this constitution that I do not like, and while there are some things that are not in there that I would like to have seen incorporated, I am satisfied as a whole with it as a compromise; but after that amendment has been made, then for that committee to come here and to strike out an amendment and submit it to the convention, I simply ask of this convention if that is their province? I don't know; I ask for information.

Mr. Craven of Lewis & Clarke· I speak as an individual member of that committee, and I will say for myself and for the committee that we do not understand it is within our power to strike out amendments which have been offered or in any way other than to express the opinion of the convention. Now, with reference to this particular suggestion, I think if you will leave it the way the convention has left it, that exception would allow the interest on the public debt paid without warrant, and since the interest on the public debt will be provided for by law anyway, we saw no use of the amendment, and therefore made the suggestion.

Mr. Hershfield of Lewis & Clarke: I think the gentleman is quite right The amendment is unnecessary, and I so expressed myself at the time.

Mr. Maginnis of Lewis & Clarke: It seems to me that this section contains two provisions. Now, interest on the public debt might have to be paid without laws. I think the section had better stand just as it is.

The President: The Chair is of the opinion that except by unanimous consent nothing in the way of an amendment which embraces striking out or adding thereto can be entertained, and if there should be any objection to the change proposed, it will have to remain as it stands in the original engrossed copy.

Mr. Marshall of Missoula: I hope that the convention will unanimously agree to this amendment. I think it is important. Now, is not that section liable to this construction, that even the interest on the public debt may be paid without appropriation?

Mr. Maginnis of Lewis & Clarke: I think it was the intention of the convention to say the interest on the public debt should be paid by appropriations made by law, but that warrants should not be necessary.

Mr. Marshall of Missoula: There ought to be something to show what it is drawn for, and a warrant on the treasury ought to be drawn for money to pay the debt by some officer, and certainly no money ought to be taken out of the public treasury except by an appropriation made by law. I say this section is liable to the construction that money to pay the public debt may be taken out of the treasury even without any appropriation, and it seems to me it ought to be stricken out by unanimous consent.

Mr. Rickards of Silver Bow: I did not think I would provoke any discussion on this matter when I called the attention of this body to it. I, however, take this view of the situation. This amendment was adopted by this convention. Fully one-third of the membership of this body are absent, and the question arises in my mind as to whether we have the right to suspend the rules without the unanimous consent of this body on this matter.

Mr. Kanouse of Meagher: As a member of the committee on revision, in the absence of the Chair, I desire to draw the attention of this convention to the way in which the additional members were appointed—that where the intention of the convention seems incompletely expressed the committee should amend such and report it to the convention. It was the idea that it was not the intention of the convention that payments should be made on interest any more than for any other purpose in the absence of an appropriation made for that purpose or in the absence of some warrant drawn by a proper officer. It seems to me that the language used in the proposition might be construed to allow the payment of interest on the public debt, or the public debt itself, in the absence of any appropriation whatever. I submit that it is susceptible of such a construction, and it seems to me that it would be perfectly proper and would perhaps be carrying out the ideas which would prevail with a majority of this convention, that no interest should be paid except by an appropriation made by law—whether a permanent law upon the subject or one made for the particular purpose of payment of some particular claim—and also that the proper officer should draw his warrant Interest has never been paid except upon appropriation and upon warrant drawn for the purpose.

Mr. Hickman of Madison: I beg leave to differ with the gentleman It is a well known fact that when a State or Territory or any municipality or county wish to float bonds that they have got to expressly state that the bill authorizing the same has set aside a sinking fund for the purpose of paying the interest and also paying the bonded debt when it becomes due. You cannot sell a bond of the State or Territory unless this thing is provided for—for the payment of the interest and the payment of the debt when matured, by a sinking fund; and suppose you sell your bonds outside the Territory, in New York, for instance, it generally provides that the interest when due, payable semi-annually, shall be paid in New York or at the capital of the State at the option of the holders. Well, suppose they are held largely in New York or in Europe and they say they want the interest paid in New York; you are compelled to keep a fund on hand, an account in New York, to pay those coupons when due. Now, must you wait until the auditor draws these warrants for every little amount you want to draw, or will the Treasurer be authorized to keep that account there instead of drawing on the auditor? That is the point.

The President: Objection having been raised to the adoption of this amendment, it will be passed.

Mr. Maginnis of Lewis & Clarke: I withdraw my objection, Mr. President.

Mr. Callaway of Madison: I object upon principle—not upon this proposition.

The President: Mr. Callaway of Madison makes objection to the striking out of this as provided by the amendment of the Revision Committee. The Revision Committee, as the Chair understands, has no authority to change the substance but simply to remove conflicting propositions and to improve the verbiage and phraseology. The amendment will not be adopted.

Mr. Hershfield of Lewis & Clarke: If we can get unanimous consent to strike that out, I think it would be a wise thing to do.

Mr. Middleton of Custer: I rise to a point of order. I understand objection has been made and probably will not be withdrawn. What is the use of laying this matter over?

The President: The point of order is well taken.

The Clerk read as follows: Section 40, last line on page of engrossed copy. Insert "in" in lieu of "into". Section 46, insert after the word "and" the words "he shall perform".

The President: This is all of the amendments to Proposition No. 19. The proposition as now amended will be referred to the Engrossment and Enrollment Committee.

The Clerk read as follows: Proposition No. 28 on Miscellaneous Subjects and Future Amendments. Section 1, line 6. strike out the word "to". Section 8, line 4, strike out the word "recommend" and insert "submit". In line five, strike out the words "to vote". In line six, after the word "election" insert "the questtion whether there shall be", and strike out the words in said line "for or against". Section 9, line 1, strike out the word "any".

The President: These are all the corrections in Proposition No. 29. The proposition will now be referred to the Enrollment and Engrossment Committee.

The Clerk read as follows.. Proposition No. 17 on Education. The committee propose that Proposition No 17 on Education be amended as follows: Section 1 is a duplicate provision of one contained in the Proposition on Ordinance, and the question of striking out is referred to the convention.

Mr. Rickards of Silver Bow asked for information in relation to same.

Mr. Craven of Lewis & Clarke (on behalf of the committee) I would state that the reasons were given in the report. This is substantially the same provision that appears in the Ordinance No. 11, I am told, Section No. 11 of Proposition No. 33 on Ordinance is as follows: That provision shall be made for the establishment and maintenance of systems of public schools which shall be open to all the children of the State of Montana and free from sectarian control.

Mr Rickards of Silver Bow: The point I want to bring out is that I understand it is necessary from the Enabling Act that this shall be in the ordinance.

Mr. Craven of Lewis & Clarke: Yes sir.

Mr. Callaway of Madison: I move the adoption of the report of the committee on that section.

The motion was seconded.

Mr. Rickards of Silver Bow: I was going to simply observe that while it is almost an exact duplicate of the other provision, yet it does seem to me that inasmuch as Section one of this Proposition 17 is so short and is so appropriate, that there is no harm done by allowing them to remain, both of them, just as they are.

The President: The gentleman from Madison (Mr. Callaway) moves the adoption of the report of the committee.

Mr. Rickards of Silver Bow: I will object. It seems to be so appropriate that I believe it ought to stand.

Mr. Callaway of Madison: I withdraw the motion.

The President: The motion is withdrawn.

The Clerk read as follows: Section 5, line 8, after the word "years" insert the words "residing therein respectively". Section 7, line 3, change "age" to "ages". Section 10, line 1, change "Legislature" to "Legislative Assembly". Section 12, line 2, strike out "the".

The President: These are all the amendments to Proposition No. 17. The proposition will be referred to the Enrollment Committee.

The Clerk read as follows: The following amendments to Proposition No. 14 on Rights of Suffrage and Qualifications to hold office are recommended: Section 2, line 1, after first word "all" insert the word "the". Section 2, line 4, after words "at all general elections" insert "and for all officers that now are or hereafter may be elected by the people and upon all questions which may be submitted to the vote of the people". Section 5, line 3, insert the word "time" in lieu of "times". Add to Section 9 the words "and to declare who shall be deemed taxpayers when a question shall be submitted to the vote of the taxayers as a class".

Mr. Rickards of Silver Bow: I object to that amendment.

Mr. Kanouse of Meagher: I rise to a point of order, sir. This committee were duly appointed under and by virtue of a resolution to do certain work and to report their action to this convention. If the action which the committee recommends is clearly within the province or authority that was given them, it becomes a question with a majority of this convention to determine, upon their report being sent to this convention, whether they shall adopt the action of the committee as the action of the convention or not, and it is not within the province of a single man by an objection, where the committee has acted under the rules that have been provided for their action, to say what is the will of the convention with regard to the work that has been performed. That is my point of order.

Mr. Myers of Yellowstone: I have understood the Chair ruled that these matters could not be changed without unanimous consent, and as this proposition of the qualification of voters has been talked about a little more than any subject before this convention, I think it is radically wrong to hoist in an amendment at this late day in the absence of so many members.

The President: It was expressly stated when the gentleman from Lewis & Clarke made the motion that it was the intention that no matter should be changed, but that the committee was appointed simply for the purpose of removing any conflicting statements or inconsistencies that might exist and for improving the phraseology. All these matters have to be placed upon their final passage, and certainly it would not be right to have any new matter interpolated or any new matter stricken out. The clear intent, as the Chair understands, is simply to improve on the words, phrases and sentences of these various articles. These articles have all been placed upon their final passage and the ayes and nays have been called on every one of them.

Mr. Carpenter of Lewis & Clarke. I would simply state that the object was not to change anything, but to make the matter clear. It is simply amending the provision so as to make clear what might be doubtful. I will say further, Mr. President, that there was no intention to change any express idea of the convention in any way except to make it more definite.

Mr. Myers of Yellowstone: I do not wish to reflect in any manner whatever upon this committee. I believe they have acted in the very best of faith, and I give them credit for trying to put this instrument into the very best possible form; but as I understand the reading of the matter proposed, it transfers to the Legislature authority which has been exercised and passed upon by this convention—that it would leave it to the Legislature to declare a man a taxpayer and entitled to vote who might simply pay a license to retail any commodity, whiskey, tobacco, etc., in the community for a short period—that that would entitle him to be classed as a taxpayer. I think the convention has discussed this matter and have deliberately and naturally passed upon all the provisions and everything pertaining to the qualifications of a voter. Hence, I think anything pertaining to a change in the character of the provisions would be radically wrong.

Mr. Rickards of Silver Bow: I want to say, since it has been my misfortune to have precipitated twice today an argument of this character—I simply want to say this, that in my judgment were we to allow at this time, or any time, this committee to recommend or offer an amendment that might change the meaning of these propositions, we would be establishing a precedent that might before this convention adjourns launch us into two or three days debate; and therefore I think we had better draw the lines, and I accordingly renew my objection. I want to be consistent. I raised my objection a moment ago because I felt we would be establishing a wrong precedent, and thinking over it again the last few minutes I see no reason why I should withdraw my objection.

The President· The Clerk will proceed.

Mr. Carpenter of Lewis & Clarke· Can this matter be disposed of by a single objection?

The President· It has been ruled that unanimous consent is necessary.

The Clerk read as follows· Section 11, line 2, after word "elections" insert "and for State offficers". Insert Proposition No. 39 as Section 12 of this proposition (No. 14) and make Section 12 Section 13. We recommend that the following be inserted as separate articles before the article on legislative departments, and that subsequent articles be renumbered to accord. Article...... Distribution of Powers. The powers of the government of this State are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

The President: If there be no objection to this recommendation, it will be adopted.

Mr. Hickman of Madison: Before that is adopted, I would like to inquire if the Chairman of the Committee on Legislative Departments (Mr. Toole) if he has any objection to this.

Mr. J. K. Toole of Lewis & Clarke: I do not think there is any objection to it.

The President: The amendments will be considered adopted and the proposition referred to the Enrollment and Engrossment Committee.

Th Clerk read as follows: Proposition No. 10, Article on Executive Departments. In line four of Section 3 of the engrossed copy the words "until otherwise provided by law" are stricken out Section 3, line 20, should not the word "three" be "two".

Mr. Maginnis of Lewis & Clarke: I move that the word stand as "two".

The President: If there be no objection, it will stand as two years instead of three.

The Clerk read as follows. Section 4, line 35. Strike out "one of them" and insert "officer"

The President If there be no objection this will be changed.

The Clerk read as follows. Section 7 on line 23, strike out all of the section after the word "qualified".

The President: If there be no objection this will be amended as reported.

The Clerk read as follows· After Section 7 insert as Section 8 Section 46 of the Article on Legislative Department and renumber all subsequent sections to accord.

The President: If there be no objection, this amendment will be adopted.

Mr. Knowles of Silver Bow· I move the convention do now adjourn.

Mr. Warren of Silver Bow: I move we take a recess until eight o'clock.

Mr. Knowles of Silver Bow: I will withdraw my motion then

The motion of the gentleman from Silver Bow (Mr. Warren) was seconded

The Chair put the question on the said motion, and the same was declared carried

The convention took a recess until 8 o'clock P. M.

The convention was called to order by the President at 8 P. M.

The Clerk called the roll

The President: The convention will now resume consideration of Proposition No. 10.

The Clerk read as follows· Section 8, line 17, strike out "a" and insert "the". Strike out line 20 and the first three words of line 21. On line 22, strike out "thereon" and insert "thereof". Line 27, strike out the final "s" of the word "proof", and after "roof" insert the word "that"; and in line 28 before the word "time" insert "the"; and on line 30 strike out "shall have" and insert "has". On line 29 after the word "and" insert the word "of" and strike out the words "applied for" and insert the word "sought".

Mr. Luce, of Gallatin: I object to striking out the words "shall have been" and inserting "has". It is certainly ungrammatical.

The President: The gentleman from Gallatin objects to the amendment on the ground that it is not grammatical, and that the words as they are are more appropriate.

Mr. Watson of Fergus: I move that the amendment read as follows: "Until notice of the time and place of such hearing and of the relief sought shall have been given by publication", etc.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

The Clerk read as follows: Section 9, strike out the word "commencement" on line 28 and insert the word "beginning". Section 10, strike out "he has" on line 4 and insert "it is", and after the word "convened" on said line, strike out "it". Section 11, line 28, strike out "Legislature" and insert "Legislative Assembly". Line 34, strike out "Legislature" and insert "Legislative Assembly". Line 39, strike out "Legislature" and insert "Legislative Assembly". Section 14, line 25, insert the words "pro tempore" after "president" in line 21, and strike out "pro tem", and after the word "president" insert "pro tempore". Section 16, line 2, strike out "this" and insert "the". Section 19, line 19, strike out "Legislative" and insert "Legislative Assembly" On third from last line of section add "s" to the word "deem".

The President: Proposition No. 10 on Executive Departments will be referred to the Engrossment Committee, the amendments read by the Clerk being adopted if there be no objection.

The Clerk read as follows: Proposition No. 21, article on Judiciary Departments. Section 2, line 13, strike out "superintending" and insert "supervisory". Section 17, line 5, insert after the word "in" the word "each". In line 6, omit the final letter "s" in the word "districts". In line 8, strike out the words "District Judge" and insert "Judges of such district". Section 30, strike out line one and insert the following: "No Justice of the Supreme Court nor Judge of the District". Section 31, strike out lines one and two and insert the following: "No Justice or Clerk of the Supreme Court, nor Judge or Clerk of any District Court shall act". Section 33, line 2, strike out "Judges" and insert "Justices". Section 34, strike out lines one, two and three, and insert as follows: "Vacancies in the office of Justice of the Supreme Court, or Judge of the District Court or Clerk of the Supreme Court shall be filled by".

The President: These being all the amendments to Proposition No 21, they will be considered adopted, if there be no objection, and the proposition will be referred to the Engrossing Committee.

The Clerk read as follows: Mr. President, your special Committee on Revision beg leave to report that they have considered proposition returned herewith and recommend the adoption of amendments as follows: Proposition No. 36, Public Indebtedness. Section 6. On line 15, strike out the word "provide" and on line 16 strike out the words "for an increase in" and insert the word "extend".

The President: These being the only amendments to Proposition No. 36, they will be considered adopted and the proposition referred to the Engrossing Committee. Proposition No. 24 and 35 are returned without correction. They will likewise be sent to the Engrossment Committee.

Mr. Warren of Silver Bow: Mr. President, Proposition No. 27 is reported back without correction. Also Proposition No. 38 on Schedules. Neither of them needs correction.

The President: The propositions will be referred to the Engrossing Committee.

The Clerk read as follows: Proposition No. 40, Apportionment and Representation On line 4 of Section 2, after the word "in" insert the words "the year".

The President: This being the only correction to Proposition No 40, it will be considered adopted and the proposition referred to the Engrossing Committe.

The Clerk read as follows: Proposition No. 31. Section 3, on line 6, strike out the word "for" after the word "proxy". Section 20, line 14, strike out "Legislature" and insert "Legislative Assembly".

The President: These being all the amendments to Proposition No. 31, they will be considered adopted and the proposition referred to the Engrossing Committe.

The Clerk read as follows: Proposition No. 33 on Ordinance. At end of line one of Ordinance 2, insert the word "proposed". Ordinance 7, on line 10, insert after the word "of" the word "public".

The President: These being all of the amendments to Proposition No. 33, they will be considered adopted and the proposition referred to the Engrossing Committee.

The Clerk read as follows: Election Ordinance. Mr. President: Your Committee on Revision report Proposition 33 with amendments herewith, which they recommend be adopted. Election Ordinance. Proposition No. 33. Ordinance 3. Strike out on line 2 the words "places in the several". Strike out on line 5 of Ordinance 3 the word "this" and insert "the". On line 8, strike out the word "this" and insert "the". On line 10 strike out the word "this" and insert "the". On line 16, strike out the word "this" and insert "the".

Ordinance 5. On line 3, after the word "canvassed" insert "by the canvassing boards of the respective counties". On line 14 strike out the words "a majority" and insert "any two of them".

Ordinance 11. On line 4, after the word "the" insert the words "Clerks of the" and on line 3 insert before the word "for" the word "and".

The President: These being all of the amendments to Proposition No. 33, they will be considered adopted and the proposition will be referred to the Enprossing Committee.

Mr. Mayger of Lewis & Clarke: If in order, I would like to turn back to Proposition No. 31. In Section 20 of the printed copy, I think the word "that" ought to be stricken out, and on line six "that the Legislature shall pass laws". It ought to be "the Legislature shall pass laws".

The President: If there be no objection to the amendments proposed by the gentleman from Lewis & Clarke, they will be considered adopted. This completes all the amendments reported back by the Revision Committee. It has been suggested by the Clerk that if the journal of the afternoon session could be read and written out it will facilitate business. If there be no objection the journal will be read.

The Clerk read the journal of the afternoon session of this day.

Mr. Rickards of Silver Bow: I move that when we adjourn we adjourn to meet at nine o'clock tomorrow morning.

The motion was seconded.

Mr. Middleton of Custer: I move to amend that motion by making it 11 o'clock. It will be absolutely impossible for the Clerks to enroll the work that is now on hand before 11 o'clock, and nothing can be accomplished except we keep those Clerks at work.

The amendment was seconded.

Mr. Rickards of Silver Bow: I know it is hardly in order, but yesterday we had a little latitude in discussing this matter, and I would like to state my reason for making this motion. Yesterday we discussed the hour of adjournment and we brought out several facts that I think have helped us today in expediting matters. My reason for making the motion to adjourn until nine o'clock, or rather fixing the hour of adjournment at nine o'clock, was that the enrolling Clerks now at work have doubtless already some of this work accomplished or completed, or they will have a greater part of it completed when they stop work tonight, and if so we can certainly meet tomorrow morning at nine o'clock and read what has been done, as we have been doing today. As the committee have completed their work we have met here and taken up their work. Now, we have heard the Chairman of this committee say it would take about four or five hours tomorrow to read this entire constitution Now, I feel like putting in a plea at this time for several of the members who have been here ever since this convention convened on the 4th of last month, and if it is in the range of possibility for us to complete our labors so that they can take the train tomorrow at four o'clock, they can reach their homes a few hours later; whereas a delay of a few hours will keep them twenty-four hours longer. Now, if it is possible for us to meet at nine o'clock and have the Clerk read what has already been accomplished, it will expedite matters very much.

Mr. Cooper of Gallatin: I was going to suggest that we pay these Clerks extra and let them work tonight. I would be very glad to pay one myself, and let them do this enrolling tonight and we will be ready to go to work at nine o'clock tomorrow morning. I would be very glad to do that.

Mr. Middleton of Custer: Mr. President, there is nobody here any more anxious to get home than I am, but this matter of pushing this work, which is very particular work, and expecting the work to be carefully done, is out of the question. It is that character of work that a man cannot work at day and night continuously, and the Chairman of the Committee on Revision informs me that they have reported everything to the convention, so that the entire matter is now in the hands of the Enrolling Committee. It seems to me impossible to get through so as to let anybody get away at four o'clock.

Mr. Maginnis of Lewis & Clarke: Would not it be better to meet at 11 o'clock and take no recess?

Mr. Middleton of Custer: I think so. We can have the matter then all arranged and we can take it up and have it read. It takes a long while after some of these articles are enrolled, to compare them. I do not believe there will be anything gained by meeting earlier than 11 o'clock tomorrow.

Mr. Rickards of Silver Bow: I wish to remind this convention that yesterday when the suggestion was made by myself that we take up a few of the propositions that the committee had already completed, it was thought impracticable, and yet upon second sober thought this convention came back this morning for the purpose of taking up these matters as the Committee on Revision and Phraseology completed them; and I believe it is not impracticable for us to meet here tomorrow morning at nine o'clock and read what the Committee on Enrollment have already completed. As for these Clerks, they have had a very easy time. Many of us have worked all night, and if it is necessary I am willing to take off my coat and work all night; and if these clerks cannot do it, I am willing to pay my share of the expense necessary to employ additional Clerks. I feel like making an earnest plea for not hurrying matters but certainly being as expeditious as possible. I do not think it is impracticable.

Mr. Bickford of Missoula: There seems to be a growing sentiment in favor of completing this work very soon, and if it be found practicable to pay these Clerks a little extra tonight, I think it will aid the Committee on Revision to get through. I think we can finish our work by one or two o'clock tomorrow, and I am strongly in favor of meeting as early as nine o'clock.

Mr. Maginnis of Lewis & Clarke: I move we adjourn. That will make it ten o'clock.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared lost.

Mr. Witter of Beaverhead: I move you that when we adjourn, we adjourn to meet at nine o'clock tomorrow morning.

The President: There was an amendment offered to that that it be made 11 o'clock. The question is now on the amendment.

Mr. Middleton of Custer: I insist upon that motion. I will not be able to report any considerable portion of the constitution back here at 10 o'clock tomorrow morning.

The President: The Chair would suggest that there is no one more anxious to get away from here than the Chair, but he would admonish the gentlemen that by the exercise of any undue haste they might overlook some vital matters pertaining to this constitution, and while I know it is important and desirable to get away from here as quickly as possible, I insist that due attention be given to everything now at the latter end, so that we may make no mistakes.

The Chair put the question on the said amendment, to adjourn to 11 o'clock, and the same was declared lost.

The President: The question now is upon the motion that when the convention adjourn it adjourn to meet at nine o'clock tomorrow morning.

The Chair put the question on the said motion, and the same was declared carried.

Mr. Hartman of Gallatin: Before the convention adjourns, in order that we may not have any imperfectly printed constitution, I move that a committee be appointed by the Chair from the Lewis & Clarke County delegation to read the printed proof of the constitution before it is sent out.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

The President: The Chair will announce the committee with the other committee that has been appointed in the morning.

Mr. Bickford of Missoula: I move we adjourn.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

The convention stood adjourned until Saturday, August 17th, 1889, at nine A. M.

THIRTY-SEVENTH DAY.

Saturday, August 17th, 1889.

The convention was called to order by the President at 9 A. M.

The Clerk called the roll.

The Chaplain offered proyer.

The Clerk read the journal of the evening session of the previous day.

Mr. Warren of Silver Bow: I have two or three resolutions here which I would like to have read.

The President: Does the gentleman from Silver Bow desire to have these resolutions read or withheld until later on?

Mr. Warren of Silver Bow: They may be withheld for the present. I would suggest that when the constitution is read, Mr. Kanouse or Mr. Hartman take the engrossed copies which were corrected and when the constitution is read by the Clerk that they notice whether the corrections have been made as recommended by the committee. I just make that as a suggestion.

Mr. Hershfield of Lewis & Clarke: Mr. President, the cashier of the Merchants National Bank requested me to make a statement this morning that will be good news to the pages and the clerks of this convention—those that are not provided for by the government—that upon properly certified accounts they can take them down to the bank and he would pay them at par.

The President The gentleman from Lewis & Clarke (Mr. Hershfield) desires to make the statement to those interested that the cashier of the Merchants National Bank requested him to state that upon properly certified accounts or statements of their accounts, the vouchers would be cashed at the Merchants National Bank without any discount.

Mr. Cooper of Gallatin I move that if the Constitution is to be read, that we proceed with the reading.

The President. The Chair has inquired if there is any part of it ready. Will the Chairman of the Engrossing Committee state whether or not the constitution is ready?

Mr. Burleigh of Custer: I would like to ask whether it is necessary, after having read this in Committee of the Whole and amended it, to have it read again in convention and amended, and have it referred to one or two committees where it has been revised, if it is necessary still to have it read again here. I want the sense of the convention. I have no feeling in regard to it myself, but it seems to me it has been read so much that it has got to be a little monotonous.

Mr. Cooper of Gallatin It seems to me, Mr. President, this will only be the third reading and it will be necessary.

Mr. Bickford of Missoula: I would suggest, Mr. President, that it has not been read at all since the engrossment of it and it will be necessary to read it over and have a comparison in some way by some member of the Engrossing Committee between the constitution as it is now written and the part of the corrected bills from which it was transcribed.

Mr. Burleigh of Custer: I would like to ask if the committee have not read it over?

Mr. Bickford of Missoula: That may be, but in order that we may be doubly safe I think it would be well to pursue the reading of it.

Mr. Burleigh of Custer I have no objection to it myself.

Mr Rickards of Silver Bow: I do not know, Mr. President, what is customary in a body like this. It my memory serves me correctly in a legislative body when a bill is reported back as correctly enrolled it is certainly not necessary to read it again to that body. The committee is supposed to correct any typographical errors.

Mr Middleton of Custer: Mr. President, the several propositions were at times amended and fearfully mutilated in the Committee of the Whole; they went into the convention and were placed upon their final passage without being engrossed; then were referred to the engrossing committee for the purpose of engrossing the bills with those amendments; then these propositions went to the Committee on Revision and Phraseology. They have been again corrected and have gone through the hands of another committee, and I do not believe there is any member of this convention would feel that he was doing himself or the people that sent him here justice if he would sign a garbled report of this kind without hearing it read for himself. I was anxious to get away from here three weeks ago. Within the last 12 or 20 hours there seems to be undue haste manifested on the part of a few, and I sumbit that in an hour and a half or two hours the committee will be able to present the whole matter intact, all as one document, and that it should be read section by section and every word of it, and I believe that it can be done today. So far as I am personally concerned, I would not hesitate to sign the constitution, because it has passed under my eyes, nearly all of it; but that is not true as to most of the members of the convention, and it certainly is at this time too important a matter to jumble over with haste. So far as I am personally concerned, I do not want to assume the responsibility as Chairman of the committee and have any member sign it without having read it over word for word.

Mr. Burleigh of Custer: If that be the case, and I have no doubt that the views of my colleague are correct, why not go on? It is not necessary to have it all pinned and starched. Why not take it up in the order in which it is sent in to us by the committee? It is not necessary to wait two or three hours to commence it. It seems to me it is a waste of time.

Mr. Warren of Silver Bow: We have been here about six weeks trying to get this constitution in shape, and I feel we ought not to jump over six weeks work in three hours. So far as I am concerned I would rather stay here another week. We have been here six weeks, and I believe in having the matter right.

Mr. Rickards of Silver Bow: In order to get the sense of this body. I move that we take up the enrolled propositions in the order in which they are to be printed in the constitution.

The motion was seconded.

Mr. Middleton of Custer: I hope that motion will not prevail, and for the very reasons that I have stated. This matter should not be settled by piecemeal and afterwards entrusted to Clerks or other persons to fix up. If it is a constitution at all it is as a whole. The different propositions as ordered to be arranged by the Committee on Revision are not in the hands of the Committee on Enrollment in that shape. The bill on judiciary has not yet been copied; there are two or three others that are not quite completed. So far as I am concerned, as Chairman of that committee, I am not ready to report back a single proposition at this moment, and refuse to do it unless the convention orders me. I think I can report the whole matter back in an hour and a half, but not sooner.

Mr. Rickards of Silver Bow: With all due respect, I think he impeaches the intelligence of that committee and this body when he says we cannot take up these propositions and arrange them in the order in which they shall be arranged. Now, those propositions stand out each for itself in their own order, and it seems to me we can take up all these and dispose of them before we take up the executive or the judiciary departments, and I hope the motion will prevail.

Mr. Luce of Gallatin: It is an old and trite saying that that which is worth doing at all is worth doing well. We have spent six weeks here now and a little over and I would like to see the business finished up in order, and if it takes a day longer, all well and good, I am willing to stay here and see it properly finished up. Now, when the Chairman of this committee says he is not ready to report and cannot reasonably report any of these propositions at this time, I think it is worthy the consideration of this convention and that that should have some weight here. Gentlemen seem to get in a hurry all at once, and I have thought sometimes that the convention has been unnecessarily delayed by motions to adjourn, by leaves of absence, by going away Thursday and getting leave until Tuesday or Wednesday. Now, in completing this instrument, I say, in the name of justice and in the name of the people, let us do it considerately and in order. Let us take the word of the Chairman of the Committee on Enrollment and go ahead with this business orderly and deliberately and not have any mistakes at the end. Notwithstanding we have been here six weeks we found that when we came to put this constitution together there were grevious mistakes.

Mr. Cooper of Gallatin: I move we take a recess until 11 o'clock.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

The convention took a recess until 11 o'clock A. M.

The convention was called to order by the President at 11 A. M.

The Clerk called the roll.

Mr. Cooper of Gallatin: Mr. President, I notice that the Committee on Revision and Phraseology have overlooked one article, the article on Apportionment and Representation. I therefore make the motion that that article be placed between the article on Legislative Derartments and Executive Departments and be numbered six. The proposition is No. 40.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

The President: There are some resolutions here offered by the gentleman from Lewis & Clarke (Mr. Toole). They may be considered now.

The Clerk read as follows: "Resolved, That immediately upon the adjournment of this convention it shall be the duty of the President to deliver the original enrolled constitution of the State as adopted and passed by this convention to the Secretary of the Territory of Montana, who shall deposit and preserve the same among the archives of the Territory."

Mr. Conrad of Choteau: I move the adoption of the resolution.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

The Clerk read the following resolution also offered by the gentleman from Lewis & Clarke (Mr. Toole): "Resolved, That when the constitution and address shall have been printed as provided by an ordinance of this convention, it shall be the duty of the Secretary of the Territory, to whom the same shall be delivered, to mail fifty copies of the same to each member of this convention and to send the remainder thereof to the several County Clerks of this Territory for distribution"

Mr. Conrad of Choteau moved the adoption of the resolution.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

The President: What is the pleasure of the convention?

Mr. Middleton of Custer: Mr. President, the committee is ready to report except upon the article on judiciary, and that will probably take 20 minutes before it is ready, and it has not yet been compared. All the rest of the propositions have been compared and are arranged, with the exception of that. There is about one page, or a trifle over a page. yet to be copied. I suppose it might be inserted and read without being compared by the committee on enrollment. It can be compared at the time it is being read by the clerk.

The President: If there be no objection, the reading of the constitution will be begun.

Mr. Middleton of Custer: We cannot very well fasten the work together. There is about a page yet to be finished. It will take about 15 minutes yet to do it.

The President: Is there any other business that the convention desires to consider while we are waiting for this?

Mr. Hartman of Gallatin: If it be in order, I believe there has been some discussion among the members as to whether or not it would not be proper to add two more members to the committee on address. I therefore move that the committee be increased to seven members.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried.

Mr. Rickards of Silver Bow: I move that when we take a recess, it shall be until the hour of one o'clock.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried.

Mr. Warren of Silver Bow: I have a resolution I would like to offer.

The President: The clerk will read the resolution offered by the gentleman from Silver Bow.

The clerk read as follows: "RESOLVED, That a committee consisting of Martin Maginnis, B. Platt Carpenter, Joseph K. Toole, Arthur J. Craven and William Muth be and are hereby appointed a committee to superintend the publication of the constitution, and that Henry Bernard be appointed a clerk of said committee."

Mr. Courtney of Silver Bow: I move the adoption of the resolution.

The motion was seconded.

The President: There is a motion to appoint a committee of three, which ought to be withdrawn before this is put.

Mr. Warren of Silver Bow: I move that the motion by which the committee of three was to be appointed to superintend the printing of the constitution be reconsidered.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried.

Mr. Warren of Silver Bow: In support of this resolution I would say that it is but just that this committee be appointed from Lewis & Clarke county. I have added there as a clerk of that committee Mr. Bernard, who has been a clerk of the committee on taxation and revenue. Mr. Bernard is perhaps one of the very best proof readers in Montana, and that is the reason I offer the resolution as it is.

The chair put the question on the adoption of the said resolution, and the same was declared carried.

Mr. Rickards of Silver Bow: I move we take a recess.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried.

The convention took a recess until one o'clock P. M.

RECESS

The convention was called to order by the President at one P. M.

The clerk called the roll.

There being no quorum present, a call of the house was ordered.

A quorum having arrived, further proceedings under the call were dispensed with.

Mr. Warren of Silver Bow offered the following ordinance.

ORDINANCE NO..................

BE IT ORDAINED: That the estimate provided for in Ordinance No. 34 for the payment of the extra employes, etc., of this convention, be and is hereby increased in the sum of one hundred dollars ($100) for the purpose of paying Henry Bernard, a secretary and proof-reader to the committee on supervising the printing of the constitution, and to defray the cost of typye-writing, etc.

RESOLVED, That a certificate to cover the expenditure mentioned in this ordinance be issued to Henry Bernard for the payment of the same, and in the manner provided for in Ordinance and Resolution No. 34.

Mr. Warren of Silver Bow moved the adoption of the ordinance.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried.

The President: There is a resolution offered by Mr. Knippenberg of Beaverhead County on the clerk's desk. The clerk will read the same.

The clerk read as follows: RESOLVED, That the President of this convention is hereby requested to appoint a committee of seven (7) (the president himself to be the chairman of such committee) which shall prepare plans and by-laws by which all the members and employes of this convention shall form a permanent organization and may meet socially at least once each year, so that the happy and agreeable relationships here formed may endure and even strengthen in the years to come. This committee shall be known as the "Executive Committee" and shall have full power to elect the proper officers for the first year, or until the first annual meeting of the proposed organization".

Mr. Hartman of Gallatin: I move the adoption of the resolution.

The motion was carried.

The chair put the question on the said motion, and the same was declared carried.

The President: The chair will appoint on that committee Messrs. Knippenberg, Maginnis, Stapleton, Marshall, Gibson, Rickards, and Myers. The committee on address will be as follows: J. K. Toole, Callaway, Dixon, Carpenter, Collins, Bickford and Warren.

Mr. Middleton of Custer: Mr. President, your committee on engrossment and enrollment are ready to report

The President: The clerk suggests that the minutes be allowed to be read, and that they can be copied now and be ready to be signed when the convention adjourns.

The clerk read the minutes of the morning session.

The President: The report of the Committee on Enrollment will now be read.

The clerk read as follows: Mr. President: Your Committee on Engrossment and Enrollment to whom were referred all of the propositions and articles together with ordinances and memorial to the Senate and House of Representatives of the United States for the purpose of being enrolled and arranged, with the several articles properly numbered, beg leave to report that your said committee have performed that duty, and herewith submit an enrolled copy of the whole of said matter.

(Signed) MIDDLETON, Chairman.

Mr Middleton of Custer stated that there was a memorial on lead ore, and asked whether it should be enrolled.

Mr. Warren of Silver Bow: In connection with that memorial, as I understand, it does not go into the constitution The Chief clerk enrolled the memorial

Mr. Middleton of Custer It is true, it does not go into the constitution, but it is customary that ordinances, which are no part of a constitution, and memorials, are as a rule printed with them, and for that reason I believe it should be a part of this report.

The President: The clerk has an enrolled copy of this memorial that might be sent to the Enrolling Committee and be referred.

Mr. Middleton of Custer: I move, Mr. President, that that be done.

The motion was seconded

The President: It is moved and seconded that the Warren memorial be enrolled and published as a part of the ordinance.

The chair put the question on the said motion, and the same was declared carried.

Mr. Warren of Silver Bow: I call for a division on the question, and before the motion is put I desire the attention of the members called as to what is the motion.

The President The question is upon the adoption of the motion to have the memorial which has been sent to Congress touching the question of lead ores engrossed and published in a proper place in the constitution

Mr Warren of Silver Bow: I think the chair is misinformed as to the motion. As I understand the motion, it is to have the memorial engrossed and a copy forwarded to the Secretary of the Treasury.

The President: The chair has already forwarded a copy to the Secretary of the Treasury.

Mr. Hershfield of Lewis & Clarke: There certainly is some impropriety in embodying in our constitution a simple memorial expressing the opinions and the wishes of our convention, and it certainly should not be printed and become a part of our constitution.

Mr. Middleton of Custer: I do not think the gentleman from Lewis & Clarke understands the purpose of the motion. It is not that it become a part of the constitution. The ordinances are no part of the constitution, but the ordinances of the convention are almost invariably printed with the constitution, and so are the memorials to Congress. I have no interest in the question, but I submit in my judgment it was one of the memorials that was passed by this convention, and if any memorial is published with the constitution it certainly should be with the rest. There is only one memorial, I believe—one to Congress and the other to the Secretary of the Interior; and I know of no reason why it should not go before the people as the expression of this convention upon that question.

The President: The question is to engross the memorial and publish it in connection with the constitution.

The chair put the question on the said motion, and the same was declared lost on division.

The President: The chair would state that he has already forwarded a copy of the memorial to the Secretary of the Treasury.

Mr. Warren of Silver Bow: As I understand, that is all that is required in the matter.

Mr. Cooper of Gallatin: I move we proceed to the reading of the constitution.

The motion was seconded.

The President: If there be no objection, the clerk will now begin the reading of the constitution.

The clerk read at some length.

Mr. Burleigh of Custer: (Interrupting the clerk), Mr. President, there are some men who distrust their friends without purpose or reason. Now, I am willing to trust our committees. For that reason, I hope the reading will be dispensed with.

Mr. Middleton of Custer: I hope the request will certainly be withdrawn for the purpose of reading the article on Judiciary. That has not been compared by any committee. So far as I am concerned, I shall insist upon reading and comparing that article. If it is the sense of the convention that the rest of the reading be dispensed with, I am agreeable.

Mr. Rickards of Silver Bow: I move that after the reading of the article on Judiciary, the further reading of the constitution be dispensed with.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried.

The President: The clerk will now proceed with the reading of the article on Judiciary.

The clerk read said article.

Mr. Hartman of Gallatin: I move that the clerk proceed to call the roll and that the constitution be placed on its final passage.

Mr. Warren of Silver Bow: I move that an attesting clause be added to the Constitution.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried.

The President: The chair did not understand the full intent of the gentleman's motion; whether it comprehends calling the ayes and nays upon the adoption of the Constitution first.

Mr. Hartman of Gallatin: I will make the motion as well.

The President: The question now is upon the adoption of the Constitution of the State of Montana. Those who are in favor of the adoption will when their names are called say aye, and those opposed no. The clerk will withhold the calling of the roll until the attesting clause is added.

Mr. Bickford of Missoula sent up a resolution to the clerk's desk.

The President: If the gentleman from Gallatin will withhold his motion on the adoption of the Constitution until the resolution of the gentleman from Missoula can be considered, it will be received and read by the clerk.

Mr. Hartman of Gallatin: I withhold the motion for the present.

The clerk read the resolution of the gentleman from Missoula (Mr. Bickford) as follows: WHEREAS, The Helena Independent, the Helena Journal, the Helena Herald, the Butte Daily Miner, and the Great Falls Leader have been laid upon the tables of the members of this convention during its entire session; and WHEREAS, the reasonable value thereof is two hundred and fifty dollars. THEREFORE, Be it ordained: That the sum of two hundred and fifty dollars is hereby made a charge against the State for the express purpose of paying said publications respectively, as follows:

The Helena Daily Independent,	Fifty Dollars.
The Helena Journal,	Fifty Dollars.
The Helena Herald,	Fifty Dollars.
The Daily Miner,	Fifty Dollars.
The Great Falls Leader,	Fifty Dollars."

Mr. Bickford of Missoula. I wish to state that the resolution is introduced because the respective newspapers mentioned have materially aided the members of this convention in keeping track of the work. It has been just as much a part of our regular business to read the newspapers as it has been to read the journal; and by reading the newspapers we have been able to correct some of the errors that have crept into it.

The President: Before this motion is put, the chair desires to ask that the Butte Miner be eliminated from the provisions of the resolution.

Mr. Aiken of Silver Bow: I move that the Boulder Age be inserted.

Mr. Bickford of Missoula: I will accept that.

Mr. Rickards of Silver Bow: I hope that if this resolution is carried the Butte Miner will not be eliminated. I think if any paper merits kind treatment from this convention it is the Butte Miner. I am opposed to the resolution in to-to, but if it is going to pass I would like to see the Butte Miner included.

Mr. Bickford of Missoula: I will ask permission to withdraw the resolution until after action on the constitution

The President: The question now is upon the adoption of the Constitution. The clerk will call the roll.

Mr. Maginnis of Lewis & Clarke: I ask unanimous consent that such of the members as desire to record their vote on the adoption of the Constitution, and who are now absent, may have that privilege later.

The President: If there be no objection, the members who are now absent may have the privilege of coming in and recording their vote for or against the constitution and signing the instrument. It should be arranged to be signed alphabetically.

The clerk called the roll The vote stood as follows: Ayes: Aiken, Bickford, Brazleton, Breen, Buford, Bullard, Burleigh, Burns, A. F.; Burns, A. J.; Burns, Edward; Cardwell, Carpenter, Cauby, Chessman, Conrad, Cooper, Craven, Dixon, Durfee, Dyer, Fields, Gaylord, Gillette, Goddard, Graves, Hammond, Hartman, Haskell, Hatch, Hershfield, Hickman, Hobson, Hogan, Joyes, Kanouse, Kennedy, Knippenberg, Knowles, Loud, Maginnis, Marrion, Marshall, Mayger, McAdow, Middleton, Mitchell, Muth, Myers, Parberry, Ramsdell, Rotwitt, Rickards, Sargeant, Schmidt, Stapleton, Toole, J. K.; Watson, Whitehill, Winston, Witter, Mr. President—61.

Nays: Courtney and Warren.

Absent. Browne, Callaway, Eaton, Joy, Kohrs, Reek, Robinson, Toole, J. R., Webster—9.

Mr. Marrion of Missoula: I move that the delegation that desire to go home on the three o'clock train be allowed to sign the Constitution now.

The motion was seconded.

The Chair put the question on the said motion, and the same was declared carried.

Mr. Hickman of Madison. I would like to inquire if the Chair has announced the vote on the Constitution.

The president: There are nine absent, 61 voting in the affirmative, and two in the negative. There is a sufficient number to adopt the Constitution, and it is hereby declared adopted (Applause).

Mr. Hickman of Madison: I move that the members of the convention be allowed ten days in which to append their names to the Constitution.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried

The President called Mr. Marshall of Missoula to the chair.

The chairman (Mr. Marshall of Missoula in the chair): Gentlemen of the convention: The following resolution has been offered by Mr. Hershfield of Lewis & Clarke.

The clerk read as follows: RESOLVED, That the thanks of this convention be, and they are hereby tendered to the Hon. Wm. A. Clark for the able, faithful and efficient manner in which he has discharged the duties of presiding officer of this convention, and for his uniform courtesy and impartiality, we extend to him our warmest gratitude

RESOLVED, That this convention, in its appreciation of the high character and worth of its President, hereby expresses its sincere wishes for his future health, happiness and prosperity, and that upon the dissolution of this convention, he will be accompanied by the earnest trust that his highest aspirations may be fulfilled, and his every aim realized.

Mr. Rickards of Silver Bow: I move the apodtion of the resolution by a rising vote.

The motion was seconded, and unanimously carried.

Mr. Hershfield of Lewis & Clarke: Mr. Chairman and Mr. President. We have been here 45 days. I am certain that each member will carry away with him nothing but pleasant recollections of his associations here and a consciousness of having discharged his duties faithfully, each according to his own conscience. I know that I express the views of all the members of this convention when I say that you, Mr. President, will carry with you not only the respect but the best wishes of the members of your future happiness and prosperity. (Applause)

The President: Mr. Chairman and gentleman of this convention: For the generous and very complimentary resolutions which have been adopted and which have been so eloquently supplemented by the remarks of the honorable gentleman from Lewis & Clarke county, I cannot summon words to fitly express my appreciation and gratitude, and I desire to avail myself of this opportunity to reciprocate the sentiment and to thank the gentlemen of this convention collectively, and each one of you personally, as well as the officers and attaches of the convention, for the indulgence, the forbearance, the courteous attention and the kindness which have uniformly and constantly characterized all of your actions and relations towards me. After forty-five days of arduous, and may I say with justice, conscientious labors on your part, during which time there have been discussed the most important and vital questions affecting the interests of this State and which necessarily involved many heated, yet manfully-conducted contests, requiring frequent and prompt decisions from the presiding officer, I can point with pleasure and pride to the fact that all these opinions have been received and accepted without appeal. This probably unparalleled experience in the history of legislative assemblies in this Territory implies a confidence in the judgment and fairness of the presiding officer, as well as a dignified and respectful consideration, which I heartily appreciate and shall ever remember with grateful pleasure, (Applause) We have now finished our labors and are about to append our names to the Constitution of the State of Montana. It is not a perfect instrument. In it are incorporated ideas and principles upon which we are not all agreed; but yielding gracefully to that recognized republican principle that the sense of the majority should always prevail, we have almost unanimously adopted it, and it will now soon be submitted to a critical and intelligent people for their approval. I believe that, notwithstanding some imperfection, the people of Montana will adopt it. If there be defects the wisdom of future legislators may be confidently relied upon to apply the remedy. Montana has an opportunity now presented her which she should not neglect to avail herself of. She cannot afford to pause or falter on the very eve and on the very threshold of admission while her three fair neighboring sisters are pressing forward to distinction and renown. (Applause). It is time to break the shackles that have for so long a time embraced the development of the resources of this country. It is time that this people, so richly endowed with all the qualities that go to noble manhood, should be entitled to enjoy the full privileges of American citizenship. Statehood will claim all of our energies and stimulate our ambition. It will encourage a faith in the stability and permanency of this country and will induce large investments in our properties. It will strengthen and enhance the credit not only of individuals but of the State; it will encourage the building of new lines of railways within our borders, and people our fertile valleys; it will establish new manufactures over this country; it will build up new cities and increase the population of the old ones, and it will facilitate the opening of the countless mines of this Territory.

In conclusion, I trust that each one of you may live to enjoy a reasonable fruition of the labors you have performed here and until the envied yet deserved fame of this magnificent State, our beloved Montana, whose fundamental law you have helped to frame, shall be extended to all the ends of the earth. (Applause).

President Clark resumed the chair.

The clerk read the resolution of Mr. Bickford of Missoula relating to pay of newspapers.

Mr. Buford of Madison moved its adoption.

The motion was seconded.

The chair put the question on the said motion, and a division being called for, the same was declared lost by a vote of 13 in the affirmative to 17 in the negative.

Mr. Fields of Park moved to reconsider the motion.

The motion was seconded.

The chair put the question on the motion, and the same was declared carried.

The President: The question is now before the convention again.

Mr. Fields of Park moved the adoption of the resolution.

The motion was seconded.

The chair stated the question.

The clerk read the resolution for the information of the convention

The chair put the question on the said motion, and a division being called for, the same was declared carried by a vote of 24 in the affirmative to 20 in the negative.

The President: The following resolution has been offered by Mr. Warren of Silver Bow: RESOLVED, That William H. Todd, Chief Clerk, Jennie M. Merriman, Assistant Chief Clerk, John M. Kay, Ed. Kerr, E. C. Garrett, Lee Swords, John M. Trumbull, Henry Barnard, Clerks, and G. H. Stanton, engrossing and enrollment clerk, for their fidelity in the faithful discharge of their arduous and laborious duties, and the thanks of this body are hereby tendered them.

Mr. Burleigh of Custer moved the adoption of the resolution.

The motion was seconded, and the resolution declared carried.

Mr. Warren of Silver Bow also offered the following resolution: RESOLVED, That the thanks of this convention are hereby extended to Samuel Alexander, Sergeant at Arms, and William I. Green, Assistant Sergeant at Arms of this House, for the thorough and satisfactory manner in which they have discharged their duties.

The resolution was unanimously adopted.

The following resolution was also, offered by Mr. Warren of Silver Bow: RESOLVED, That Eugene Dickerson, Maurice Langhorne, Cornelius Hedges, Jr, and William Alexander, Pages of this House, have earned the gratitude of the members of this convention for their faithful discharge of duty as Pages, and the thanks of this body are hereby tendered them

The resolution was unanimously adopted.

Mr. Warren of Silver Bow also offered the following resolution, which was unanimously adopted.

RESOLVED, That the prayers of Rev. H. E. Clowes, Chaplain of this Convention, have largely contributed to the good feeling and comfort of the members thereof, and that the thanks of this convention be and the same are hereby extended to him, with the best wishes of the members.

Mr Middleton of Custer: Mr. President, I move you that the gentleman from Silver Bow (Mr. Warren) be tendered a vote of thanks by this convention for his efficiency and versatility in perparing resolutions.

The motion was seconded

The chair put the question on the said motion, and the same was declared carried.

Mr. Bickford of Missoula offered the following resolution:

RESOLVED, That Lee Swords be and he is hereby appointed clerk of the Committee on Address, and the chief clerk of this convention is authorized and directed to add an additional sum of twenty-five dollars in the warrant heretofore provided for to pay him for said services.

The resolution was adopted.

Mr. Middleton of Custer: I move you that the President of this convention be instructed to send appropriate messabes to the other conventions that are still in session, indicating our adjournment today.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried.

Mr. Courtney of Silver Bow: I just wish to observe here that since the Constitution has been so nearly unanimously adopted, I wish to change my vote and vote aye.

Mr. Hershfield of Lewis & Clarke: I object

Mr Courtney of Silver Bow: I wish to say further, Mr. President, that I was not actuated by any antipathy to the instrument, but I did so for this reason, that in as much as I voted against certain propositions which the instrument contained, I wished to be consistent, but it occurred to me that a wrong interpretation of the vote might be put upon it, and so I desire to change.

Mr. Hershfield of Lewis & Clarke: I will withdraw my objection, Mr. President.

The President: By unanimous consent, the vote of the gentleman from Silver Bow (Mr. Courtney) will be changed to aye.

Mr. Warren of Silver Bow: While there are very many things in this constitution which I have voted against, and while there are some things in it that I do not believe in, I do not desire to stand here as the only man opposing that Constitution, and I ask the unanimous consent of this house to withdraw my vote of No and vote Aye.

The President: If there be no objection, the gentleman will be allowed to change his vote.

Mr. J. K. Toole of Lewis & Clarke: I think it would be entirely fitting to close the proceedings of this convention with "The Star Spangled Banner", and I know the President of this convention can sing that song admirably, and I move that he be requested to sing it and the convention join in the chorus.

The motion was seconded.

The chair put the question on the said motion, and the same was declared carried.

The convention then sang the "Star Spangled Banner", the members rising to their feet.

Mr. Warren of Silver Bow: Mr. President, if all the members have signed the constitution and there is no further business before the convention, I move the convention adjourn sine die.

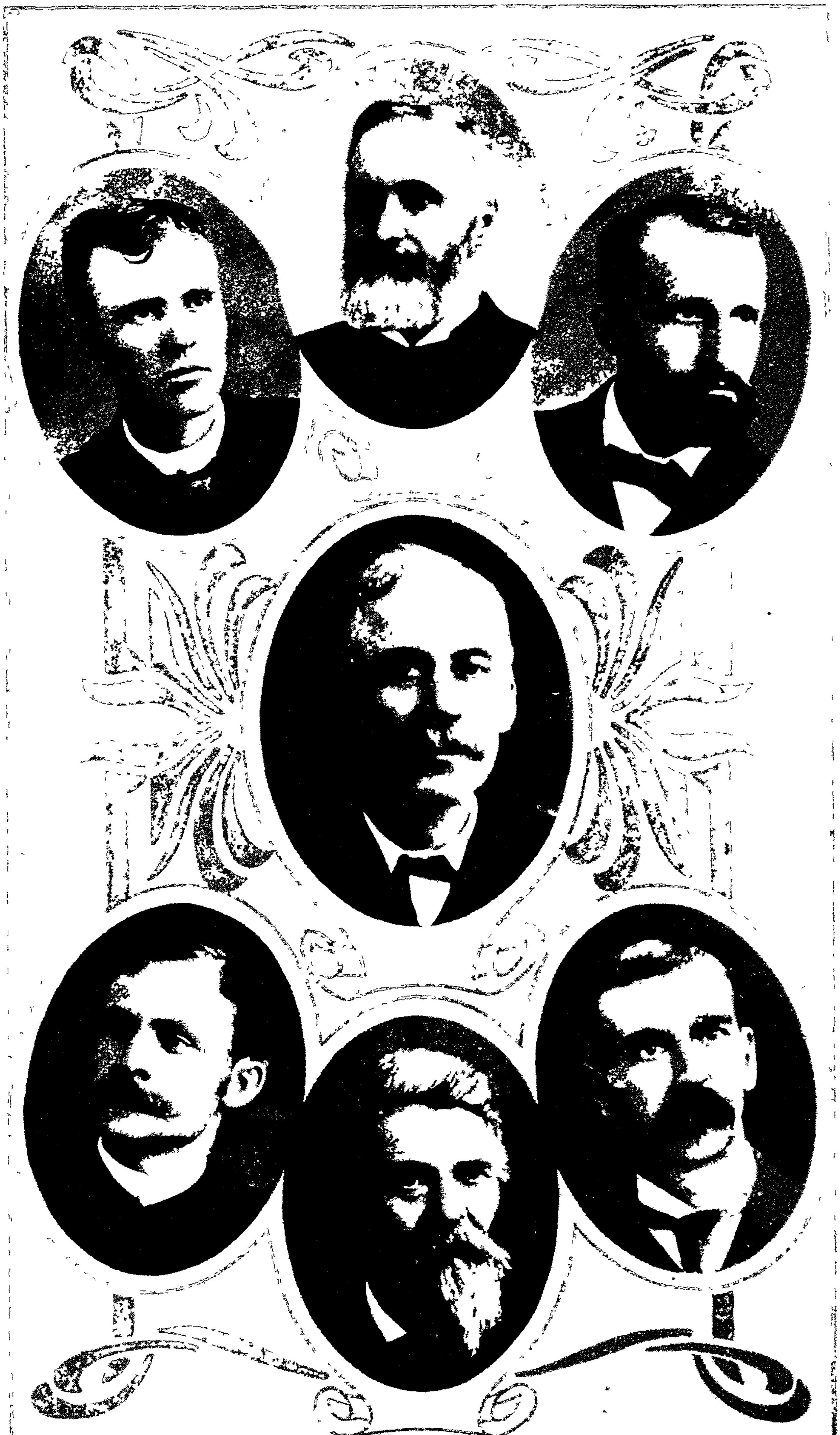
The motion was seconded.

The President: It is moved and seconded that the Constitutional Convention of the State of Montana do now adjourn sine die. Those in favor of the motion will say Aye, those opposed No

The motion was declared carried.

The President: The Chair will present the gavel and the pen used by the members in signing the constitution, to the Historical Society of Montana.

At three o'clock and thirty five minutes in the afternoon of Saturday, August 17th, 1889, the Constitutional Convention of the State of Montana stood adjourned sine die.



PETER BREEN
H. E CLOWES, Chaplain

WILLIAM PARBERRY
JOHN C ROBINSON
ANDREW J. BURNS

JOHN E GAYLORD
WILLIAM DYER

PERSONAL RECORD INDEX

Page

AIKEN, E D
- Favors Bickford amendment to Sec 2, proposition 14—woman suffrage... 458

BICKFORD, W. M.
- Accepts substitute offered by Marion to Sec 2, proposition 14—suffrage.... 353-4
- Argues for open elections... 98
- Desires to refer grand jury question to Judiciary Committee... 102
- Discusses and supports his substitute for Sec. 2, proposition 14—suffrage..347-50
- Does not favor amendment by Joy to Sec 2, proposition 14—woman suffrage... 369
- Favors Conrad amendment to Sec. 3, proposition 27—Revenue and Taxation... 475
- Favors Goddard amendment to strike out Sec 18, proposition 10—Reports of Executive Departments... 435
- Favors Watson amendment to Sec. 11, proposition 14—Laws allowing women to vote... 405-6
- Further supports his substitute to Sec. 2, proposition 14—woman suffrage 371
- Nominates Alexander Sergeant-at-Arms... 15
- Nominates Jos K. Toole as Temporary Chairman... 12
- Offers an Amendment to Resolution 8, relating to School Lands... 218
- Offers amendment to Sec. 2, proposition 14—suffrage... 451
- Offers resolution for adding clerks and pages... 23
- Offers substitute for Sec. 2, proposition 14—suffrage... 330
- On Constitutional amendment... 578
- On District Court terms... 905
- On criticisms by Helena Journal...739-41
- On Helena Journal scandal... 802-3
- On location of Capital...778-779
- Offers proposition on public lands... 629
- On public lands...830, 832
- On public water... 890
- On sale of school lands... 591-2.
- On State Institutions... 870
- On State Institutions...861-62
- Opposes Hershfield amendment to Sec. 19, proposition 10—Power of Board of Examiners and Governor... 437
- Submits Report on Preamble... 64
- Submits Report of Committee on Preamble... 47
- Supports amendment offered by Dr. Parberry for Sec. 13, proposition 26—Judicial Districts...287-288
- Supports Committee Report on Preamble... 97
- Supports private property confiscation...121-22
- Supports reformation of criminals... 126

BLAKE, CHIEF JUSTICE
- Swore in members... 16

BRAZELTON, J. F.
- Excused... 487
- Excused... 487
- Excused... 393
- Opposed Convict Labor Section... 402

BREEN, PETER
- Favors Burleigh substitute for Sec. 2, proposition 14—woman suffrage... 366-7
- Offers amendment to Sec. 2, proposition 18, Seat of Government...411-12
- On corporation liability...709-10
- Opposes private armed forces... 130
- Reports proposition 2 on convict labor... 176
- Reports proposition 3 on contract labor... 176
- Reports on proposition 6... 177
- Reports proposition 7 on Chinese labor... 176-7

BREEN, PETER—Continued Page
Reports Resolution 7 on blacklisting 176
Submits Report on bureau of labor convict contract labor 65
Submits Report on child labor and eight-hour law 65-66
Submits Report on Chinese labor, also importation of labor and blacklisting 65
Supports Convict Labor Section 202-3
Supports Hartman amendment to Sec. 2, proposition 14—suffrage 338-9
Supports original provision on child labor 210

BROWNE, D. G.
Committee on City, County and Town Organization, reports on petition from citizens of Glasgow, Dawson County, against fixing limit of three million of assessable property for creation of new counties 383
Excused 393
Offers amendment to Sec. 2, proposition 18—Seat of Government 411-412
Offers amendment to Sec. 4, proposition 10—salary of executive officers 446
Offers amendment to Sec. 19, proposition 21—relating to County Attorney 320
Offers resolution on general elections 90
Offers resolution on pay of State officers 76
Reports on Resolution 6, by Goddard 274
Reports on Proposition 7, by Joy 274
Reports on Resolution 9, by Kennedy 75
Reports on Resolution 14, new counties 133
Reports on Resolution 18, by Buford 74
Sent up report on resolution pertaining to City, County and Town Organi*zations—article on municipal corporations and officers* 272-4

BUFORD, S. R.
Offers resolution on succession in public office 66

BULLARD, W. M.
Excused 487, 418, 271, 35, 30
Supports Dixon amendment on convict labor 204

BURNS, A. F.
Excused 285

BURNS, A. J.
Offers resolution on mining 275
On irrigation water rates and taxes 557
BURNS (?)
Objects to longhand transcript 57-58
Offers proposition on irrigation 61
Suggests Committee of Eleven on irrigation 52

BURLEIGH, W. A.
Denounces grand jury system 101
Discusses Sec. 1, proposition 27, Revenue and Taxation 469-70
Discusses his amendment to Sec. 2, proposition 14—suffrage 452
Discusses his amendment to Sec. 11, proposition 10—extra sessions 447
Discusses Sec. 13—Bill of Rights 253
Discusses Middleton amendment to Sec. 19, proposition 21, relating to County Attorney 318-9
Favors original for Sec. 8, proposition 10—power of governor 430
Favors amendment to Sec. 16, proposition 21—persons eligible to judge of District Court 315-6
Favors original Sec. 18, proposition 10—reports of executive departments 435
Favors striking out Middleton motion to sub-division of Sec. 2, proposition 14—persons convicted of crime not allowed to vote 361-2
Makes remarks on Collins amendment to Sec. 29, proposition 26—salary of Justices and Judges 297
Moves the adoption of Sec. 17, as amended—deposition of witnesses 262
Moves to amend suggestion by Warren to Sec. 2, proposition 18—Seat of Government 411-412
Moves change of phraseology in Rule 42 30
Moves to fill vacancy of Assistant Chief Clerk 77
Moves to increase number of Committee on Apportionment and Representation 27
Moves to strike out words in Sec. 9—Declaration of Rights 251

BURLEIGH, W. A—Continued Page
Moved to strike out Sec. 24, Law for punishment of crime—Bill of Rights 268
Nomination of Eaton (2nd) 13
Objects to Committee on Credentials 17
Objects to proposition 21—Judicial power 218
Offers amendment to convict labor section 200
Offers amendment to Sec. 1, proposition 11—article on labor 240
Offers substitute for Sec. 3, proposition 27—revenue and taxation 474
Offers amendment to Sec. 8, proposition 14—suffrage—who not allowed to vote 400
Offers an amendment to Sec. 10, proposition 14—suffrage—passing of laws by Legislature 403
Offers amendment to Sec 11, proposition 10—extraordinary sessions 447
Offers amendment to Sec 11, proposition 10—bills passed by legislature 445
Offers amendment to Sec 20, proposition 10—office of State Examiner 440
Offers and supports his amendment to Sec. 29, proposition 20—Salary Justices and Judges 304-5
Offers amendment to Sec. 30—Bill of Rights 147
Offers amendment to Sec. 36, proposition 26—Trial Judge 308
Offers amendment to Sec 37, proposition 26—Judges' forfeiture of office 308
Offers resolution allowing territorial officers, members Constitutional Convention 1884 and Supreme Court Judges the floor 32
Offers resolution on County indebtedness 138
Offers resolution for Committee on Irrigation 33
Offers resolution limiting five minutes to each member for debate in Committee of Whole 419
On County Committee Boards 668-9
On Constitutional amendment 578
On Constitutional amendment 648
On County Superintendent of Schools 692
On corporation liability 704-5
On corporation liability 712
On deposition of witnesses 164-5
On deposition of witnesses 161
On effective dates for laws 607
On election and terms of County office 687-8
On establishment of new counties 663-4
On fees, District Court Clerks 906, 7, 9
On irrigation water rights and taxes 564-6
On legislative oath of office 536-7
On legislative apportionment 598
On limiting debates 489
On location of capital 789, 736-38
On mining claim taxation 496
On passage of legislation 619-20
On property rights of women 585-6, 587
On public water 900
On sale of public lands (school) 846-7, 850
On sale of public land (school) 844
On State Examiner 613
On school lands 521
On State Institutions 863, 866-7
On taxation limitation 492
On taxing movable property, Indian reservations 924, 926
On taxation of movable property 933
On term of County officers 885
On water tax question 495, 501, 505-506
On questionable votes in Convention 882-3
Opposes amendment to Sec 9, proposition 21—judicial power 220-21
Opposes amendment to Sec 15—criminal defense 158
Opposes amendment to Sec. 15—criminal defense 159
Opposes Clark amendment for Sec 2, proposition 14—suffrage 354
Opposes Collins amendment to Sec. 4, proposition 10—salary of executive officers 443
Opposes Goddard amendment to Sec 4, proposition 10—salary of executive officers 425
Opposes Hartman 2nd division of substitute for Sec. 2, proposition 14—suffrage 391-92, 335

BURLEIGH, W. A.—Continued Page
Opposes Hershfield amendment to Sec. 19, proposition 10—duty of Board of Examiners and Governor—Makes motion to lay amendments to Sec. 19 on table or indefinitely postpone same 439
Opposes Hershfield amendment on militia 194
Opposes Labor Bureau 197-8
Opposes Marshall amendment to Sec 2, proposition 27—Revenue and Taxation 484
Opposes to recommit proposition 21 on Judiciary to Judiciary Committee and makes amendment to same 328
On railroad passes 584
On railroad passes to public officers 543-4
On railroad passes to State officers 539-40
Opposes substitute for resolution 7, relating to Chief Stenographer 234
Opposes substitute for Sec. 17, Bill of Rights 257-8
Opposes Sec. 1, proposition 27, Revenue and Taxation, moves to amend Sec. 1, proposition 27 468
Opposes Warren amendment to Sec. 1, proposition 27, Revenue and Taxation 482
Opposes Warren amendment to Sec. 10, proposition 14, suffrage—Passing of laws by Legislature 402-403
Questions Dixon on Grand Jury question 109-110
Requests additional time for Committee work 77
Requests copies of Rules for members 25
Requests reading rule on reconsideration 30
Supports his amendment to Sec. 2, proposition 18—Seat of Government 413-414
Supports amendment to Sec. 13, proposition 21—Judicial power 226-7
Supports amendment to proposition 21, Sec. 13—Judicial power 224
Supports Collins amendment to Sec. 13, proposition 26—Judicial Districts 286-87
Supports increase in all committees 28
Supports his motion to increase committees on apportionment and representation 27
Supports his substitute for Sec. 2, proposition 14—woman suffrage 372-3
Supports the Woman Suffrage section of Bickford's in his substitute for Sec. 2, proposition 14—suffrage 240-1
Suggests that Chief Stenographer be given assistants 36
Suggests members release per diem to cover expenses 38
Suggests rearrangement of working hours for Convention 50
Withdraws his amendment to Sec. 1, proposition 27—Revenue and Taxation 470
Withdraws his amendment to Sec. 8, proposition 14—who not allowed to vote 400
Withdraws amendment on Rule 42 30

CALLAWAY, J. E.
Asks for report on woman's suffrage 841
Discusses amendments offered to Sec. 2, proposition 14—suffrage (woman's) 364
Discusses his amendment to Sec. 8, proposition 10—power of Governor 431
Favors Collins amendment to Sec. 29, proposition 26—salary of Justices and Judges 301-2
Favors recommitting proposition 21 on Judiciary to Judiciary Committee 329
Favors striking out Sec. 17—deposition of witnesses 259-60
Objects to Committee of Credentials 17
Offers amendment to new section of proposition 21—divorces 325
Offers amendment to Sec 4, proposition 10—salary of executive officers 428
Offers amendment to Sec. 8, proposition 10—power of Governor 431
Offers resolution on free passes 48
Offers resolution on woman's suffrage 490
Offers substitute for Preamble 249
On Constitutional amendment 654
On hall and State office holders 576
On irrigation water rights and taxes 567
On location of capital 826-7
On Mexican ores 673
On railroad passes to public officers 542-3
On railroad passes to State officers 539
On public lands (school) 835
On sale of public lands (school) 849, 851
On State boundaries 916

CALLAWAY, J E.—Continued Page
Opposes amendment to Sec. 13, proposition 21—Judicial power 227-8
Opposes amendment to Sec. 17, deposition of witnesses 259-60
Opposes Bickford amendment to Sec. 2, proposition 14—suffrage 452-453
Opposes Hartman amendment to Sec 2, proposition 14—suffrage 343-4
Opposes Knowles militia amendment 191
Opposes Marion amendment to Sec. 2, proposition 14—suffrage 357
Reports for Committee on Boundaries 75
Reports on Preamble and Bill of Rights 177-8
Reports on public lands 246
Reports on resolution 8 (public lands) 75
Reports on Sec. 16, Bill of Rights 181
Supports substitute for resolution 7, relating to Chief Stenographer 237-8
Supports amendment to Sec. 18, Bill of Rights—person testifying against himself 263
Withdraws report on Bill of Rights for correction 179

CARDWELL, EDWARD
Supports amendment of Parberry to Sec 13, proposition 26—Judicial district 294

CARPENTER, B P
Discusses amendment of Collins to Sec 29, proposition 26—Salary of Justices and Judges 296-97
Discusses his substitute for Secs. 12, 13, 14, 15, proposition 14—Laws on suffrage 408
Favors Hartman 2nd division of substitute for Sec. 2, proposition 14—suffrage 389
Favors Watson amendment to Sec. 11, proposition 14—laws allowing women to vote 405, 406
Illustrates his substitute for Sec. 17, Bill of Rights 259
Moves to insert in line 5, Sec. 18—person testifying against himself—Bill of Rights 262
Moved to strike out portion of Sec. 24—law for punishment of crime—Bill of Rights 268
Moves to strike out line 4, Sec. 9, Bill of Rights 252
Moves to strike out part of second line, Sec. 9—Bill of Rights 251
Objects to afternoon sessions 78
Objects to Burleigh amendment to Sec. 8, proposition 14, suffrage—who not allowed to vote 400
Objects to Committee of Credentials 17
Objects to longhand transcript 56
Offers additional Section No. 39, proposition 26, trial of impeachments 308-9
Offers amendment to private property tax for corporate debt 514
Offers amendment to Sec. 2, proposition 14—suffrage 449
Offers amendment to Sec. 4, proposition 10—salary of executive officers 428
Offers substitute for Sec 8, proposition 10—power of Governor. Carpenter discusses his substitute 429
Offers amendment to Hartman amendment to Sec. 2, proposition 14—suffrage 392
Offers amendment to Sec. 2, proposition 14—suffrage 399-400
Offers amendment to amend Sec. 11, proposition 14—laws allowing women to vote 406
Offers amendment to Sec. 15—Bill of Rights 254
Offers amendment to Sec. 17—Bill of Rights 254-5
Offers and supports amendment to grand jury question 117
Offers amendment to Preamble 94, 96
Offers amendment to section on franchises 119
Offers resolution regarding Sec. 2, proposition 11—article on labor 242
Offers substitute for Secs. 12, 13, 14, 15 of proposition 14—laws on suffrage 407
On Constitutional amendment 652-3
On date of legislative meeting 604
On deposition of witnesses 163
On election and term of County officers 688-9
On interpretation of Enabling Act 888
On legislative representation 651-2
On location of capital 766, 78, 770
On Mexican ores 672
On sale of public lands (school) 847-8
On taxation of movable property 933-4

CARPENTER, B. P.—Continued Page
- Opposes Collins resolution on pay of Chief Stenographer 39-40
- Opposes Collins amendment to Sec. 29, proposition 26—salary of Judges and Justices 302-3
- Opposes Hartman amendment to Sec. 2, proposition 14—suffrage 344
- Opposes limiting property rights of women 575
- Opposes Toole amendment to sub-division 2, Sec 2, proposition 14—persons convicted of crime not allowed to vote 363
- Opposes Toole substitute for Sec. 2, proposition 14—suffrage 398
- Reports on proposition 11, article on labor 238
- Sent up amendment to Sec. 29, proposition 26—mileage of Justices and Judges 304
- Suggests leaving grand jury question to Legislature 117-8
- Suggests method of action in seating members 23
- Supports amendment to Sec. 17, Bill of Rights 254-5
- Supports movement to strike out part of second line, Sec. 9—Bill of Rights 251-2
- Supports resolution to Sec. 2, proposition 11, article on labor 242
- Withdraws Sec. 39, proposition 26, trial and impeachment 309

CAUBY, MILTON
- Excused 329

CHADWICK
- Letter on name for State 174-6

CHESSMAN, W. A.
- Calls for division of question Chief Stenographer pay 41
- Offers amendment to tax levy section 517
- Opposes Knowles militia amendment 190
- On sale of public land (school) 845
- Seconds motion to close nomination 14

CLARK, W. A.
- Desires to abolish the grand jury system 100
- Discusses his amendment to Hartman amendment for Sec. 2, proposition 14—suffrage 392
- Discusses his amendment to Sec. 13, proposition 26—Judicial Districts 293-4
- Favors Burleigh substitute to Sec. 2, proposition 14—woman suffrage 373-4
- Favors Goddard amendment to Sec. 4, proposition 10—salary of executive officers 425
- Favors Hershfield amendment to Sec. 19, proposition 10—duty of Board of Examiners and Governor 438
- Favors Middleton motion to strike out sub-division 2 of Sec. 2, proposition 14—persons convicted of crime not allowed to vote 360-61
- Favors original for Sec. 8, proposition 10—power of Governor 430-31
- Makes closing speech 971-72
- Moved to allow press representative on floor 16
- Moved to strike out Sec. 9, proposition 14—suffrage—power of Legislature 400
- Nominated Todd as temporary Chief Clerk 15
- Seconds nomination of Toole 13
- Offers amendment to amendment offered by Hartman to Sec. 2, proposition 14—suffrage 392
- Offers amendment to Bickford's substitute for Sec. 2, proposition 14—suffrage 351
- Offers amendment to Hershfield amendment to Sec. 19, proposition 10—duty of Board of Examiners 436
- Offers amendment to Sec. 10, proposition 14—suffrage—passing of laws by Legislature 400-401
- Offers amendment to Sec. 20, proposition 10—office of State Examiner 440
- Offers substitute for pending amendment for Sec. 3, proposition 26—Judicial Districts 291-2
- Offers substitute to Secs. 13, 14—irrigation 156
- On County Superintendent of Schools 693
- On corporation liability 702
- On corporation elections and regulations 713
- On effective dates for laws 607
- On length of Legislative session 603
- On location of capital 753-6
- On railroad passes to public officers 546-7

CLARK, W. A.—Continued— Page
On school lands ... 528
Opposes amendment to proposition 21, Sec. 13—judicial power ... 225
Opposes amendment to Sec. 1—militia ... 168
Opposes amendment of gentlemen from Cascade to Sec. 13, proposition 26—Judicial districts ... 283, 284
Opposes Burleigh substitute for Sec. 3, proposition 27—revenue and taxation—Favors original report of committee on Sec. 3 ... 475-476
Opposes Collins amendment to Sec. 29, proposition 26—salary of Justices and Judges ... 302
Opposes Collins amendment to Sec 29, proposition 26—salary of Justices and Judges ... 297
Opposes grand jury system ... 115-116
Opposes Hartman amendment to Sec. 2, proposition 14—suffrage—Favors main proposition for Sec. 2 ... 346-7
Opposes proposition 15—Bureau of Agriculture ... 216
Opposes Toole substitute for Sec 2, proposition 14—suffrage ... 398
Opposes Whitehall amendment to Labor Bureau ... 198
Refuses arguments for grand jury system ... 101-2
Submits amendment to Bill of Rights ... 99-100
Supports foreign property owners ... 127-8
Supports his amendment to Sec 2, proposition 14—suffrage ... 353
Supports his substitute on irrigation ... 156
Supports Luce substitute Sec 30—Bill of Rights ... 140
Takes his chair and thanks Convention ... 21

COLLINS, T. E
Debate on Sec. 13, proposition 26—Judicial district ... 276
Explains Stenographer expenses ... 42
Explains that longhand writers to be paid by Stenographer ... 42
Favors Burleigh substitute for Sec. 2, proposition 14—woman suffrage ... 368-69
Favors Sec. 1, proposition 27—revenue and taxation ... 470
Makes remarks on Sec. 29, proposition 26—salary of Justices and Judges ... 303
Moved amendment to recommitting proposition 21—Judiciary—to Judiciary Committee ... 326
Moved that amendment to Sec 17, deposition of witnesses, be adopted ... 262
Moves to refer pay question to Committee ... 43
Moves to have longhand transcript of proceedings ... 36
Moves to add a Clerk to Committee on Finance ... 33
Moves to increase Committee on County, City and Town Government ... 27
Moves postponement of election of extra officers ... 25
Moves exceptions be made in choosing seats ... 23
Nominates subordinate officers by a resolution ... 21
Objects and asks that Convention be sworn in ... 15
Objects to printing minority reports ... 68
Objects to incorporation in Constitution of legislation ... 126
Offers amendment to farm tax section ... 491
Offers amendment to Sec 1, proposition 10—executive department ... 445
Offers and supports amendment to Sec. 1, proposition 11—article on labor ... 239
Offers amendment to Sec 2, proposition 14—suffrage ... 462
Offers amendment to Sec. 2, division 1, proposition 14—suffrage ... 359
Offers amendment to, Sec. 4, proposition 10—salary of officers. Collins supports his amendment ... 442
Offers amendment to Sec 11, proposition 14—laws allowing women to vote ... 404
Offers a Section No. 13, proposition 14—persons receiving highest number of votes ... 408-409
Offers amendment to Sec 23, Jury System Bill of Rights ... 267
Offers amendment to Sec. 29, proposition 26—salary of Justices and Judges ... 296-
Offers amendment to proposition 21, Sec 13—judicial power ... 223
Offers amendment to proposition 21, Sec. 12—judicial power ... 222
Offers amendment to proposition 21—judicial power ... 219
Offers resolution on printing of Constitution ... 948
Offers resolution on pay of Chief Stenographer ... 38
Offers and supports amendment to Sec. 9, proposition 21—judicial power ... 220
On County Commissioner Boards ... 668
On corporation elections and regulations ... 723-4
On election and term of County officers ... 689
On establishment of new Counties ... 660
On fees District Court Clerk ... 908
On irrigation water rights and taxes ... 565-67

COLLINS, T. E.—Continued Page
- On interpretation of Enabling Act 888
- On legislative oath of office 535
- On location of, capital 787-88
- On Mexican ores 674-5
- On per diem of Legislators 601
- On parliamentary order 172-3
- On passage of legislation 620
- On public lands (school) 837-8
- On public water 896-7, 900-1
- On representation 938
- On sale of public land (school) 845-6
- On State institutions 859
- On tax levy section 518
- On water tax question 506, 507, 508, 509
- Opposes Burleigh amendment to Sec. 10, proposition 14—suffrage—Passing of laws by Legislature 403-404
- Opposes Conrad amendment to Sec. 3, proposition 27—revenue and taxation Further discusses amendment 477-478
- Opposes Conrad amendment to Sec. 3, proposition 27—revenue and taxation 473
- Opposes grand jury system 113-114
- Opposes Maginnis amendment to Sec. 2, proposition 14—suffrage 450
- Remarks on his amendment to Sec. 29, proposition 26—salary of Justices and Judges 298
- Reports on finance 642-3
- Reports on resolution 15, license taxes 179
- Reports on resolution 20, liquor dealers 179
- Reports on resolution 21, prohibiting gambling 179
- Reports on resolution 25, County indebtedness 179-80
- Requests special Clerk for Finance Committee 45
- Supports amendment to Sec. 15—criminal defense 158
- Supports his amendment to Sec. 11, proposition 14—laws allowing women to vote 404-405
- Supports amendment to proposition 21, Sec. 13—judicial power 223
- Supports amendment of Middleton to Sec. 19, proposition 21, relating to County Attorney 319
- Supports Burleigh amendment to Sec. 29, proposition 26—salary of judges 305
- Supports increase in Committee on Government 29
- Supports Maginnis amendment to Preamble 94
- Supports proposition 21—judicial power 219
- Supports report of Committee on Rules 26
- Supports request for special Clerk 46
- Suggests seven as number 18
- Suggests a Committe of Credentials 16
- Withdraws amendment to proposition 21—judicial power 223
- Withdraws motion for Finance Clerk 34

CONRAD, C. E.
- Discusses his amendment to Sec. 3, proposition 27—revenue and taxation 474
- Excused 270
- Gives reasons for offering amendment to Sec. 25—rights of foreign born persons—Bill of Rights 269-70
- Offers additional section to be Sec. 20, proposition 10—office of State Examiner 440
- Offers amendment to Sec. 3, proposition 27—revenue and taxation. Discusses his amendment 472
- Offers amendment to Sec. 25—rights of foreign born persons—Bill of Rights 269
- Offers amendment to Sec. 25—rights of persons of foreign birth—Bill of Rights 268
- Offers resolution on State Examiner 66
- Offers report of Printing Committee 51
- Offers resolution on new Counties 60
- On establishment of new Counties 661
- On public lands (school) 838
- On sale of public land (school) 851, 844
- Opposes Burleigh amendment to Sec. 3, proposition 27—revenue and taxation 474
- Reports resolution 8 and propositions 10, 11, 13, 14 and 15 137-38
- Reports on propositions 14, 23 and 24, having been correctly printed 383

CONRAD, C. E—Continued Page
  Reports on propositions 18, 19, 21, 22 184
  Reports on proposition 17 177
  Reports from Committee on Printing 65
  Sent up substitute for amendment to proposition 21—divorces 326
  Submits report on rules and order 65
  Submits report on propositions 1 and 2 65
  Withdraws his motion to have a Sec. 20, proposition 10—office of State Examiner 440

CRAVEN, A. J.
  Moved to amend Sec. 23, jury system—Bill of Rights 264
  Moves separate election for each subordinate officer 22
  Offers amendment to Sec. 29, proposition 21—salaries of Justices and Judges 322
  On interest on the public debt 957-8
  On Mexican ores 675
  On railroad passes 593-94
  On senatorial representation 635-6
  On school lands 523-5
  Opposes amendment to Sec. 1—militia 168
  Opposes Hartman amendment to Sec. 2, proposition 14—suffrage 341
  Opposes Watson amendment to Sec. 11, proposition 14—laws allowing women to vote 407
  Suggests consolidation of labor and agriculture bureau 198
  Supports Sec 30—Bill of Rights 141

COOPER, WALTER
  Offers amendment to proposition 21, Sec. 11—judicial power 221
  On fires on State lands 538
  On irrigation water rates and taxes 556-7
  On public water 890
  On representation 937-8
  On taxation of mining claims 494
  On water tax question 497, 498
  Reports on proposition 14, rights of suffrage—Committee of the Whole 419
  Withdraws amendment to proposition 21—judicial power 222

COURTNEY, T. F.
  Objects to reading of protest from Dawson County against Conrad resolution 272
  On fires on State lands 537
  On representation 944-5
  On railroad passes to public officers 547-8
  Opposes Burleigh substitute for Sec. 2, proposition 14—woman suffrage 373
  Opposes Hartman amendment to Sec. 2, proposition 14—suffrage 332-3
  Opposes private armed forces 129
  Opposes striking out of Sec. 2, proposition 11—article on labor 241
  Opposes Warren amendment to Sec. 10, proposition 14—suffrage—passing of laws by Legislature 401
  Supports convict labor 205
  Supports Sec 5, payment of employees 213
  Supports substitute Sec. 30—Bill of Rights 142

DIXON, W. W.
  Accepts Maginnis amendment to his amendment to Sec. 25, rights of foreign born persons—Bill of Rights 270
  Amendment Committee of five on order of business 24
  Discusses substitute for convict labor 206
  Favors having proposition 21, on judiciaries, recommitted to Judiciary Committee 328
  Favors original for Sec. 8, proposition 10—power of Governor 430
  Favors to recommit proposition 21 to Judiciary Committee 326
  Introduces substitute for the Preamble 247
  Objects to amendment by Winston to Sec. 8, proposition 21, relating to Chief Justice 312
  Offers amendment to rule for adoption of resolutions 29
  Offers amendment to Preamble 96
  Offers amendment to convict labor section 203
  Offers amendment to water tax section 501
  Offers amendment to Sec. 16—deposition of witnesses 166

DIXON, W. W.—Continued Page

Offers amendment to Sec. 18—Bill of Rights—person testifying against himself 262
Offers amendment to Sec. 24—law for punishment of crime—Bill of Rights 268
Offers amendment to Sec. 25—rights of foreign born persons—Bill of Rights 270
Offers resolution assigning permanent seat to members 23
Offers resolution adopting Constitution of United States 22
Offers substitute for Preamble 93
Offers substitute for Sec. 22—Bill of Rights 125
Offers substitute for Sec. 24—Bill of Rights 126
On deposition of witnesses 160
On irrigation water rights and taxes 561-63
On location of capital 744-6
On Mexican ores 673
On military reservations 682
On State institutions 866
Opposes amendment for Sec. 13, proposition 26—judicial districts 281-82
Opposes striking out part of second line, Sec. 9—Bill of Rights 251
Reports on Indian reservations 627
Reports on judicial departments 150-51
Reports on military reservations 627
Reports on proposition 21—article on judicial departments 377-8
Reports on resolution 16 (policing) 74
Reports on resolution by Browne of Choteau, relating to State, District or County officers 272-3
Submits amendment to grand jury question 100
Supports foreign property owners 127
Supports grand jury system 117, 107, 108

DURFEE, D. M.

Excused 417
On per diem of Legislators 603
Sent up petition of citizens of Deer Lodge County relative to Sunday law 271
Supports amendment to Sec 15—criminal defense 158

DYER, WILLIAM

Excused 418

EATON, GEORGE O.

Excused 393
Moves adjournment 25
Moves ballot for President 20
Moves to adjourn 18
Moved unanimous vote for Toole 14
Nominated Hershfield President 20
Offers amendment to Preamble 96, 93
Offers proposition on education 60
Offers proposition on labor 60
Offers report of Military Affairs Committee 51
Offers resolution on pay of Convention employees 71
On election and term of County office 686
On location of capital 791
On public water 897-98
Opposes Blackwell address question 79
Opposes grand jury system 104
Opposes rate of pay of Stenographer 42
Questions Robinson militia amendment 188
Reports on proposition 19 617
Requests equitable distribution of clerks 33
Suggests designation of necessary officers 19
Supports his resolution on extra clerks 73

FIELDS, WILLIAM T.

Denounces private armed forces 129
Excused 310
Offered a seat in Convention 31
Offers resolution on police service 61
Offers resolution on blacklisting 61
Offers substitute Sec. 30—Bill of Rights 139
Offers Sec. 30 to Bill of Rights 129

FIELDS, WILLIAM T.—Continued Page
  On corporation elections and regulations 713, 721
  On corporation liability 712
  On senatorial representation 624
  Supports convict labor section 201
  Supports his substitute Sec 30—Bill of Rights 146-7, 140

GAYLORD, J. E.
  Excused 31, 63, 67, 183, 444

GIBSON, PARIS
  Excused 132, 394
  On irrigation water and taxes 563
  On location of capital 752-3
  On water tax question 503

GILLETTE, W. C
  Excused 376

GODDARD, O. F.
  Discusses his amendment to strike out Sec. 18, proposition 10—reports of executive departments 435
  Excused 212, 183
  Moves nomination be closed 14
  Moved to strike out Sec. 14, proposition 27—revenue and taxation 480
  Objects to opening Convention floor to visitors 80
  Offers amendment to Sec. 4, proposition 10—salary of executive officers 424-425
  Offers amendment to strike out Sec. 18, proposition 10—reports of executive departments 435
  Offered amendment to Sec. 29, proposition 26—salary of Justices and Judges 296
  Offers amendment to resolution on suffrage 170
  Offers resolution in relation to County officers 35
  On deposition of witnesses 162-163
  On election and terms of county office 685-86
  On establishment of new counties 662-3
  On fees District Court Clerks 907
  On fires on State lands 537-38
  On location of capital 792-3
  On per diem of Legislators 602
  On property rights of women 586
  On taxing movable property 926-7
  On water tax question 511-512
  Opposes amendment to Sec. 2, proposition 14—suffrage 450
  Opposes amendment to Sec. 23, Bill of Rights—jury system 265
  Opposes Collins amendment to Sec. 29, proposition 26—salary of Justices and Judges 300
  Opposes amendment of Collins to Sec. 13, proposition 26—judicial districts 284-5
  Opposes 2nd division of substitute for Sec 2, proposition 14, by Hartman—suffrage 387-8
  Opposes Warren amendment to Sec. 1, proposition 27—revenue and taxation 482
  Requests report on County officers 71
  Seconds nomination of Eaton 13
  Supports his amendment to Sec. 4, proposition 10—salary of executive officers 425
  Withdraws his amendment to Sec 13, proposition 26—judicial districts 288

GRAVES, F. L.
  Excused 183

HAMMOND, R. E
  Excused 183
  Offers amendment to Sec. 4, proposition 10—salary of executive officers 446
  Offers resolution on gambling 76

HARTMAN, CHARLES S.
  Accepts amendment offered by Clark to his substitute for Sec. 2, proposition 14—suffrage 392
  Discusses Toole substitute for Sec. 2, as amended, proposition 14—suffrage 396
  Excused 410, 107, 62-63

HARTMAN, CHARLES S.—Continued Page

- Moved to amend the amendment to Sec. 23, jury system—Bill of Rights 264
- Moves to amend by laying Sec. 3, proposition 11, convict labor, on table 245
- Moves to strike out all Sec. 18, after "offense," on second line—Bill of Rights—person testifying against himself 263
- Objects to time limit on introduction of bills to Legislature 606
- Offers amendment to Sec. 1, proposition 27—revenue and taxation. Supports his amendment 469
- Offers amendment to Sec. 2, proposition 14—suffrage 330
- Offers substitute for Sec. 2, proposition 14—suffrage 385
- Offers amendment to Sec. 3, proposition 27—revenue and taxation 472
- Offers amendment to Sec. 4, proposition 10—salary of executive officers 447
- Offers amendment to Sec. 7, proposition 14—who eligible to hold office—suffrage 400
- Offers proposition on religious toleration 47
- Offers substitute on taxation 567-68
- On fees District Court Clerk 909
- On irrigation of arid lands 676-7
- On water tax question 501-502
- Opposes Conrad amendment to Sec. 3, proposition 27—revenue and taxation 473
- Opposes child labor 211
- Opposes amendment proposition 21, Sec. 13—judicial power 223-4
- Opposes amendment to Sec. 23, jury system—Bill of Rights 266
- Opposes substitute for Sec. 13, proposition 26—judicial districts 280-1
- Proposition on Indian lands 47
- Proposition on public schools 47
- Proposition on territory debts 47
- Supports his amendment to Sec. 2, proposition 14—suffrage 331-2
- Supports his 2nd division of substitute for Sec. 2, proposition 14—suffrage 388

HASKELL, HENRI J.

- Excused 132
- Offers protest from Dawson County inhabitants against passage of Conrad resolution 272
- On estimate of new counties 661-2
- On representation 938-9

HERSHFIELD, L. H.

- Amendments to 1 o'clock July 5th 16
- Excused 194
- Favors Goddard amendment to strike out Sec. 18, proposition 10—reports of executive departments 435
- Moves postponement of report by Committee on Rules 25-26
- Offers amendment to farm tax section 491
- Offers amendment to Mayger amendment to Sec. 4, proposition 10—salary of executive officers 445
- Offers Sec. 6 to militia proposition, withdraws amendment 193-4
- Offers amendment to Sec. 9, proposition 10—what information Governor may get from each office 431
- Offers amendment to Sec. 10, proposition 10—duty of Board of Examiners 436
- Offers amendment to Robinson amendment to Sec. 4, proposition 10—salary of executive officers 427
- Offers resolution on Preamble 32
- Of Committee on Miscellaneous Subjects, reports on proposition 25, by A. J. Burns, concerning establishment of mining bureau 384
- Of Committee on Miscellaneous Subjects, reports on petition of citizens of Deer Lodge County, relative to Sunday law 383-84
- On County indebtedness 892
- On fees District Court Clerks 906
- On location of capital 805
- On National and State office holders 576
- On property rights of women 585
- On religious tolerance 877
- On sale of public lands (school) 847, 843
- Opposes Burleigh amendment to Sec 11, proposition 10—extra sessions 447
- Opposes Warren amendment to Sec. 1, proposition 27—revenue and taxation 482
- Questions Robinson militia amendment 188
- Questions rule on President pro tem 26
- Reports on proposition 16, relating to gambling 233

HEIRSHFIELD, L.H.—Continued Page
Reports on resolution 10, relating to free passes granted by corporations 233
Reports resolution 27, office holding 488
Reports on memorial from Methodist-Episcopal Conference concerning establishment of Sunday law and prohibition of liquor traffic 233-4
Seconds unanimous motion 14
Seconds nomination of Eaton 14
Supports his amendment to Sec. 9, proposition 10—information Governor may get from each office. Hershfield withdraws amendment for present 432
Supports his amendment to Sec. 4, proposition 10—salary of executive officers 427
Withdraws his amendment to Sec. 4, proposition 10, salary of executive officers, and accepts Luce amendment 427-428

HICKMAN, R. O.
Amendments to 10 o'clock July 5th 16
Favors Collins amendment to Sec. 29, proposition 26—salary of Justices and Judges 303
Objects to Committee on Credentials 16
Offers amendment as additional section—courts established by authority 309
Offers amendment to proposition 10, Sec. 2—election of executive officers 423-424
Offers amendment to proposition 21, Sec. 13—judicial power 223
On duties of Treasurer 614
On interest on the public debt 957-8, 957
On public lands (school) 836
On sale of public land 853
Presents petition from Madison County on suffrage 74
Seconds nomination of Hershfield, President 20
Withdraws his amendment to Sec. 13, proposition 26—judicial districts 276

HOBSON, S. S.
Offers amendment to new counties resolution 664

HOGAN, J.
Favors Clark amendment for Sec. 2, proposition 14—suffrage 354
Objects to minority report being filed from Labor Committee 66
Offers amendment to Sec. 12, proposition 14—who eligible to office 465
Offers proposition on contract labor 62
Offers proposition on convict labor 50
On corporation elections and regulations 724
On legislative apportionment 598
On Mexican ores 675
On questionable votes in Convention 882
Opposes amendment to convict labor section 200
Opposes Hartman 2nd division of substitute for Sec. 2, proposition 14—suffrage 390-1
Opposes Hartman amendment to Sec. 2, proposition 14—suffrage 333-4
Opposes Luce amendment on Bureau of Labor 197
Opposed to Middleton amendment to Sec. 30, proposition 26—what Supreme or District Judge not to accept 307
Opposes private armed forces 130-1
Opposes substitute for Sec 2, proposition 11—convict labor 244
Opposes to recommit proposition 21, on judiciary, to Judiciary Committee 327-28
Opposes Warren amendment to Sec. 1, proposition 27—revenue and taxation 482
Supports convict labor section 201-2
Supports Labor Bureau section 198

JOY, A R
Discusses his amendment to Sec. 2, proposition 14—woman suffrage 459-460
Excused 393, 173, 29
Favors revised grand jury system 103-4
Moved to lay McAdow additional amendment to proposition 14, Rights of Suffrage, on table 466
Nominates Eaton for temporary Chairman 13
Offers amendment to railroad passes section 574
Offers amendment to Sec. 2, sub-division 1—suffrage 359
Offers amendment to Sec. 2, proposition 14—woman suffrage 369, 459, 449
Offers amendment to Sec. 13, proposition 26—judicial districts 276

JOY, A R.—Continued Page
Offers proposition on labor 60
Offers resolution on Chinese labor 60-1
Offers resolution on suffrage 49
Offers resolution on Preamble 32
On deposition of witnesses 164
On legislative apportionment 598-99
On senatorial representation 625-6
Opposes amendment of Parberfry to Sec. 13, proposition 26—judicial districts 291
Presents petition for equal suffrage 64
Rotwitt and Gillette report on resolution 6, by Goddard 274
Supports amendment to Sec. 13, proposition 21—judicial power 227, 230
Supports Fields sub-section 30—Bill of Rights 142
Supports Hartman amendment to Sec. 2, proposition 14—suffrage 333

JOYES, THOMAS
Moves to amend Secs. 8-9, Article 1—Declaration of Rights 251
Offers amendment to Sec. 29, proposition 26—salary of Judges 305-6
Offers amendment to Sec. 4, proposition 10—salary of executive officers 427
Opposes amendment by Parberry to Sec. 13, proposition 26—judicial districts. Also speaks further on same matter 288-90, 293
Supports Collins amendment to Sec. 29, proposition 26—salary of Justices and Judges 299
Supports his amendment to Sec. 29, proposition 26—salary of Judges of Supreme Court 305-6

KAY, MR. (Watchman)
Resigned 30

KANOUSE, J. E.
Excused 183
Moves to amend Sec. 9—Bill of Rights 252-3
Moves to amend Sec. 9—Declaration of Rights 251
Offers Sec. 15 to Bill of Rights 124
Offers substitute for Preamble 92
On interpretation of Enabling Act 887-8
On liability of railroads for damages 587-8
On sale of public land (school) 842, 845
On public water 895
Reports on legislative departments 956-7-8
Reports proposition 17 531
KENNEDY, W. J.
Moved that Sec. 3 be inserted for Sec. 2, proposition 11—article on labor 240
Offers resolution on creation of new counties 47
On county indebtedness 892
On school lands 520
Seconds nomination of Eaton 13

KNIPPENBERG, H.
Excused 31, 183, 393, 444, 487

KNOWLES, HIRAM
Agrees, the people establish Constitution 91
Defines roads Sec. 13—irrigation 156
Discusses child labor 210-11
Discusses Middleton amendment to Sec. 19, proposition 21, relating to County Attorney 318-9
Favors Bickford amendment to Sec. 2, proposition 14—woman suffrage 453, 454, 455, 456
Favors Burleigh amendment to Sec. 10, proposition 14—suffrage—passing of laws by Legislature 403-404
Favors Conrad amendment to Sec. 3, proposition 27—revenue and taxation 478, 474, 475
Favors Hartman 2nd division of substitute for Sec. 2, proposition 14—suffrage 390
Favors small committees 28-29
Favors 2nd division of substitute for Sec. 2, proposition 14, by Hartman—suffrage. Knowles further supports same 386

KNOWLES, HIRAM—*Continued* Page
Offers amendment to militia proposition 190
On corporation liability 708-9-10
On County indebtedness 892
On deposition of witnesses 160-1, 165-6
On district court terms 906
On effective dates for laws 607
On expiration of territory office 917-8
On fees District Court Clerks 906-7
On irrigation water rates and taxes 555-6
On irrigation 865
On limiting legislative power 596-597
On location of capital 746-51, 771-72, 793
On passage of legislation 620
On public water 898-899
On religious tolerance 877-8
On sale of public lands (school) 847
On State institutions 862-3, 867, 868-9
On State boundaries 917
On County Superintendent 692-3
On taxation of mining claims and railroad lands 493-494
On taxing movable property (Indian reservations) 924-5
On term of office 578
On water tax question 498-499, 509-511
Opposed amendment to Sec 15, criminal defense 158-9
Opposed amendment to Sec 1—militia 167-68
Opposed to amendment to child labor 210
Opposed amendment to Sec 13, proposition 21—judicial power 228-9
Opposes amendments to Sec 19, proposition 10—duty of Board of Examiners 437
Opposes Goddard amendment to strike out Sec. 18, proposition 10—reports of executive departments 435, 436
Opposes Hartman amendment to Sec. 2, proposition 14—suffrage 341, 335-6
Opposes Hartman amendment to Sec. 1, proposition 27—revenue and taxation 469
Opposes Marshall amendment to Sec 2, proposition 27—revenue and taxation 486
Opposes Maginnis amendment to Sec. 2, proposition 14—suffrage 449-450
Opposes Merriam substitute amendment to militia proposition 191-2
Opposes substitute for Sec 17—Bill of Rights 258-9
Opposes Sec. 18, as amended—Bill of Rights—person testifying against himself 263
Opposes Whitehall amendment to Sec 8, proposition 14—who not allowed to vote 466-467
Question Robinson militia amendment 188
Reports on schedule article 784-86
Scores members for narrowness 79
Seconds motion for Committee of Credentials 17
States the people and not Convention are establishing Constitution 95
Supports longhand transcript 57
Supports original Sec. 9, Bill of Rights 252
Supports private property confiscation 122-3
Supports reformation of criminals 125-6
Supports substitute for Preamble 247-8
Supports Toole amendment on irrigation 149
Sustains point on credentials 17

KOHRS, CONRAD
Excused 183
Offers report of Agriculture Committee 52
Reports on agriculture and commerce 75-76
Letter from Montana Society of Civil Engineers on irrigation presented 418-419
Liddell, Judge, administered oath to Kohrs 35

LOUD, C. H.
Moves adoption report Committee on Rules 25
Offers amendment to tax levy section 514
Offers amendment to Sec. 7, proposition 27, revenue and taxation 481
Offers amendment to Sec. 19, proposition 21, relating to County Attorney 320
Offers resolution on railroad commission 76

LOUD, C. H.—Continued Page
- Offers resolution for Committee on Order of Business, one from each district 24
- Offers substitute for Secs. 2-3, proposition 27—revenue and taxation 470-471
- Withdraws motion for Committee on Order of Business 24

LUCE, L. A.
- Excused 232, 271
- Favors Conrad amendment to Sec. 3, proposition 27—revenue and taxation 473-474
- Moves to adjourn until July 5th, 12 M. 16
- Nominates Connolly as temporary Stenographer 16
- Offers amendment to Sec. 2, proposition 27—revenue and taxation 472
- Offers amendment to Sec. 2, proposition 14—woman suffrage 461
- Offers amendment to Sec. 4, proposition 10—salary of executive officers 427
- Offers amendment to Bureau of Labor section 196
- Offers amendment to water tax section 496-497
- Offers resolution on irrigation 138-139
- Offers resolution on licenses 60
- Offers resolution on regulation of liquor industry 76
- Offers resolution on prohibition of gambling 76
- Offers substitute Sec. 30—Bill of Rights 140
- Offers substitute section on railroad passes 572
- On deposition of witnesses 161-62
- On District Court terms 905
- On fees, District Court Clerk 910
- On irrigation water rights and taxes 563-4
- On legislative apportionment 598
- On location of capital 732-34, 768-9, 773, 792
- On Mexican ores 672
- On mining claim taxation 495-496
- On public lands (school) 830, 832-3, 835-6
- On public water 896
- On sale of public land (school) 841-2, 848-9, 852
- On school lands 520-21
- On term of County officers 885-86
- On taxing movable property (Indian reservations) 925-6
- On taxation of movable property 934
- On water tax question 503-505
- Opposes amendment to Sec. 13, proposition 21—judicial power 230
- Points advantages of Credential Committee 17
- Presents resolution on school lands 47
- Supports convict labor 205
- Supports grand jury system 112-113
- Supports private property confiscation 123-4
- Supports his own substitute Sec. 30—Bill of Rights 142

MAGINNIS, MARTIN
- Believes Order of Business and Rules under one head 24
- Desires ruling on distribution of subject matter of Constitution 34
- Discusses Sec. 4, proposition 10—salary of executive officers 425
- Excused 193
- Favors his amendment to Sec. 2, proposition 14—suffrage 450-451
- Favors second division of substitute for Sec. 2, proposition 14, by Hartman—suffrage 388-9
- Holds that people and not Congress establish Constitution 91
- Moves a return of congratulations to Washington and the Dakotas 19
- Moves adjournment 30
- Moved adoption of proposition 1, Bill of Rights 270
- Moves that Sec. 3, proposition 11, convict labor, be referred to Committee on Revision and Phraseology 245
- Moves roll call for President 20
- Moves to strike out Sec. 12, fixing the qualifications of executive officers, proposition 14 407
- Moved that proposition 21 be adopted—judiciary 326
- Objects to proceedings re. religion 93-94
- Objects to Robinson militia amendment 189
- Objects to separate election for subordinate officers 22
- Offers amendment to Carpenter amendment to Sec. 2, proposition 14—suffrage 449

MAGINNIS, MARTIN—Continued Page

Offers amendment to Sec. 2, proposition 27—revenue and taxation 487
Offers amendment to Sec. 4, proposition 10—salary of executive officers 426-427
Offers amendment to Sec. 2, proposition 18—seat of government 417
Offers amendment to Sec. 14—Bill of Rights 124
Offers substitute for Sec. 17—Bill of Rights 257
Offers amendment to Sec. 19, proposition 10—duty of Board of Examiners 436
Offers Fields a vote to adopt the Constitution of the United States 31
Offers resolution on arid lands 63
Offers resolution on municipal corporations 274-5
Offers amendment to Rules 193
On Board of Education 531
On Constitutional amendments 647-8-9, 653-4
On criticism by Helena Journal 740-1
On establishment of new Counties 660-61
On Indian reservations 927
On interest on the public debt 957
On irrigation water rates and taxes 558-61
On location of capital 729-32
On ordinances 921-22
On passage of legislation 620
On railroad passes to public officers 540
On school lands 526-7
On State institutions 867, 864
On water tax question 498
Opposes Burleigh amendment to Sec. 2, proposition 14—woman suffrage 369-72
Opposes Collins amendment to Sec. 4, proposition 10—salary of executive officers. Favors original Sec. 4 442-443
Opposes Conrad amendment to Sec. 3, proposition 27—revenue and taxation 472-473
Opposes Goddard amendment to strike out Sec. 18, proposition 10—reports from executive departments 435
Opposes Hartman amendment to Sec 2, proposition 14—suffrage 337-8
Opposes Joy amendment to Sec. 2, proposition 14—woman suffrage 460-61
Opposes Marshall amendment to Sec. 2, proposition 27—revenue and taxation 486
Opposes Reek amendment to Sec. 4, proposition 10—salary of executive officers 426
Opposes Winston amendment to Sec. 11, proposition 10—bills passed by Legislature 434
Opposes private armed forces 130
Opposes to recommit proposition 21, judiciary, to Judiciary Committee 328
Points out that law determines officers of Convention 19
Presents resolution on military resolution 488
Reports on proposition 21—article on judiciary 311
Requests division of Buford resolution on public office 66
Seconds motion to strike out Sec. 17—Bill of Rights 257
Submits report on executive 64
Supports Collins resolution on pay of Chief Stenographer 40
Supports his amendment to Sec 19, proposition 10—power of Board of Examiners and Governor 438
Supports Marion substitute for Sec. 2, proposition 14—suffrage 352
Supports Marion amendment to Sec. 2, proposition 14—suffrage 356-7
Supports original Sec. 23, jury system—Bill of Rights 265
Supports previous resolution to Sec. 2, proposition 11—convict labor 242-3
Supports printing of minority reports 70-71
Supports private property confiscation 123
Supports rearrangement of hours 50
Supports reading of protest from Dawson County against Conrad resolution 272

MARION, J. E.

Excused 393
Moves Sec. 6 to be stricken out—eight-hour day question 213
Offers amendment to Sec. 2, proposition 14—suffrage 331
Offers amendment to Sec. 1, military affairs 167-8
Offers amendment to militia proposition 191
Offers substitute for Sec. 2, proposition 14—suffrage 462
Supports his militia amendment 192

Page

MARSHALL, CHARLES S.

Accepts amendment offered by Carpenter to Sec. 11, proposition 14—laws allowing women to vote ... 406
Defends grand jury system ... 104-6
Discusses his amendment to Sec. 2, proposition 27—revenue and taxation ... 485-486
Discusses 2nd division of substitute for Sec. 2, proposition 14, by Hartman—suffrage ... 387
Discusses Hershfield amendment to Sec. 19, proposition 10—power og Board of Examiners and Governor ... 438
Excused ... 393
Favors and supports his amendment to Sec. 11, proposition 14—laws allowing women to vote ... 406
Favors Maginnis amendment to Sec. 2, proposition 14—suffrage ... 450
Offers amendment on public lands (school) ... 834
Offers amendment to Sec. 1, proposition 10—executive department ... 445
Offers amendment to Sec. 2, proposition 27—revenue and taxation. Discusses and supports his amendment ... 483
Offers amendment to Sec. 10, proposition 14—rights of suffrage ... 464
Offers amendment to Sec. 11, proposition 14—rights of women at school election ... 464
Offers amendment to Sec. 11, proposition 14—laws allowing women to vote ... 405, 406
On deposition of witnesses ... 166
On location of capital ... 269-70
On public lands (school) ... 838
On sale of school lands ... 590-91
On sale of public lands (school) ... 850-51
On school lands ... 526
Opposes confiscation of property ... 120
Opposes Sec. 18, Bill of Rights—person testifying against himself ... 263
Proposition on public lands ... 628

MAYGER, WILLIAM

Discusses his amendment to Sec. 11, proposition 14—laws allowing women to vote ... 404-405
Offers amendment to Sec. 4, proposition 10—salary of executive officers ... 442, 445
Offers amendment to Sec. 10, proposition 14—rights of suffrage ... 465
Offers amendment to Sec. 11, proposition 14—laws allowing women to vote 404
Offers amendment to Sec. 14, proposition 27—revenue and taxation ... 480
On tax exemption of mining claims ... 493
Presents name of Miss Merriman for Assistant Chief Clerk ... 77
Withdaws motion to Sec. 11, proposition 14—laws allowing women to vote, and he offers new amendment to same ... 406-407

McADOW, P. W.

Excused ... 31
Offers additional section to proposition 14, to be Sec. 13—rights of suffrage 465
Offers amendment to Sec. 10, proposition 14—rights of suffrage ... 464
Opposes Bickford substitute for Sec. 2, proposition 14—suffrage (woman's) ... 363-4
Supports extra Clerk question ... 73
Supports substitute for Sec. 2, proposition 11, convict labor ... 243-4

MIDDLETON, C. R.

Defines "open" in open election ... 99
Discusses convict labor ... 207
Discusses why subdivision 2 of Sec. 2, proposition 14, persons convicted of crime not allowed to vote, be stricken out ... 360
Discusses Sec. 29, proposition 26—mileage for Justices and Judges ... 304
Discusses Winston amendment to Sec. 8, proposition 21, relating to Chief Justice ... 313
Excused ... 487, 418, 410
Explains meaning of his amendment to Sec. 30, proposition 26—what Supreme or District Judge not to accept ... 307
Favors amendment offered by Parberry for Sec. 13, proposition 20—judicial districts ... 292
Further opposes amendment to Sec. 16, proposition 21—person eligible to Judge of District Court ... 316
Moves to adjourn ... 15
Moves correction on minutes of third day ... 31

MIDDLETON, C. R.—Continued Page
- Moves that subdivision 2 of Sec. 2, proposition 14, suffrage, be stricken out 360
- Moved proposition 1 be referred to Printing Committee 213
- Moved propositions 2 and 13 be referred to Engrossing and Enrolling Committee 213
- Objects to Committee of Credentials 16
- Objects to increase in Committee on Government 27-28
- Objects to printing minority reports 69
- Objects to Robinson militia amendment 189
- Objects to section on railroad passes 574-5
- Offers amendment to Sec. 19, proposition 21, relating to County Attorney 318
- Offers amendment to Sec. 29, proposition 26—salary of Justices and Judges 296
- Offers amendment to Sec. 29, proposition 21—salaries of Justices and Judges 320
- Offers amendment to Sec. 30, proposition 26—what Supreme or District Judge not to accept 306-7
- Offers amendment to Sec. 30, proposition 21—what Judge Supreme Court and District Court not to accept 324
- Offers resolution on mileage 36
- Offers resolution on rules amendment 51
- On Constitutional amendments 649-50
- On corporation elections and regulations 723-4
- On corporation liability 725
- On effective dates for laws 606-7
- On fees, District Court Clerk 908-9
- On irrigation of arid lands 678-9
- On irrigation water rights and taxes 557-8
- On length of legislative session 603-4
- On legislative power to expel 605
- On legislative apportionment 598, 600
- On legislative oath of office 535-36
- On location of capital 751-2
- On National and State office holders 576
- On property rights of women 586
- On public lands (school) 833
- On railroad passes to public officers 540-42
- On senatorial representation 629-30
- On State Examiner 613
- On State institutions 866
- On tax levy section 515-516
- On taxation of movable property 932-3
- Opposes amendment to amendment of Sec. 23, Bill of Rights—jury system 264
- Opposes Clark amendment to substitute for Sec. 2, proposition 14—suffrage 352
- Opposes Collins amendment to Sec 29, proposition 26—salary of Justices and Judges 299
- Opposes Collins resolution on pay of Chief Stenographer 38-39
- Opposes convict labor section 200-201
- Opposes Hartman amendment to Sec. 2, proposition 14—suffrage 339-40
- Opposes Warren amendment to Sec. 16, proposition 21—person eligible to Judge of District Court 315
- Recalls resolution 7 on Stenographer pay 76
- Recites evils of grand jury system 102-3
- Reports on resolution 7, relating to duties and compensation of Chief Stenographer 234
- Requests postponement of Preamble vote 184
- Seconds nomination of Clark, President 20
- Seconds nomination of Toole 14
- States mileage of members may be submitted 34
- Suggests use of Rules of Old Convention 24
- Supports extra Clerk question 72
- Supports his amendment to Sec. 19, proposition 21, relating to County Attorney 318
- Supports majority report on Stenographer pay 53-4
- Supports substitute for resolution 7, relating to Chief Stenographer 234-5

MITCHELL, SAMUEL
- Excused 132

MUTH, WILLIAM
- Moves division of question on Stenographer pay 59
- On introduction of appropriation bills to Legislature 608

MYERS, ALFRED — Page

- On County indebtedness 892
- Excused 132
- Nominates W. A. Clark, President 20
- On irrigation water rates and taxes 552-4
- On irrigation (public water) 899
- Offers amendment to Sec. 18, proposition 21, relating to District Clerk 317
- Offers resolution on persons holding office of profit under the United States and commissioned by President 275
- On public lands (school) 837-8
- On qualifications of voters 960
- On sale of public lands (school) 850
- On tax exemption of mining claims 492-493
- On taxation of mining claims 494
- Reports on State institutions 132
- Supports Parberry amendment to Sec. 13, proposition 26—judicial districts 294

PARBERRY, WILLIAM

- Cites Colorado Constitution on private property confiscation 121
- Excused 29, 376
- Offers new section to proposition 21—divorces 324
- Parberry supports his new section to proposition 21—divorces 324
- On location of capital 776
- On property rights of women 586-7
- On railroad passes 593
- On sale of public (school) land 843
- On school lands 523, 527-28
- On State institutions 864
- On water rights and taxation 569
- Opposes Robinson amendment to Sec. 13, proposition 21—judicial districts 314-15
- Opposes substitute of Collins for Sec. 13, proposition 26—judicial districts 279-80
- Remarks on Collins amendment to Sec. 29, proposition 26—salary of Justices and Judges 300
- Reports proposition 8, on irrigation 137
- Reports on proposition 20—irrigation 376
- Reports on resolution by Maginnis, on arid lands 137
- Reports on Society of Civil Engineers' petition 488

PLUMB (of Kansas)

- On statesmanship 824-26

POWELL, MAJOR

- On irrigation 820-23

RAMSDELL, W. R.

- Discusses Marshall amendment to Sec. 2, proposition 27—revenue and taxation 485
- Favors Burleigh amendment to Sec. 2, proposition 14—woman suffrage 369
- Favors Hartman 2nd division of substitute for Sec. 2, proposition 14—suffrage 390
- Moves to amend substitute for Sec. 2, proposition 14, by Hartman 386
- On County indebtedness 892
- On election and term of County officers 688
- On estimate of new counties 661
- On irrigation water rights and taxes 560-61
- On legislative oath of office 536
- On location of capital 732
- On Mexican ores 674
- On per diem of Legislators 602
- On sale of public land (school) 841, 853
- On school lands 525-6
- Opposes amendment to Sec. 25, rights of foreign born persons—Bill of Rights 269-70
- Opposes Burleigh amendment to Sec. 11, proposition 10—extra sessions 448
- Opposes private armed forces 131
- Supports convict labor section 209
- Supports proposition of longhand transcript 55-6

Page

REAGAN (of Texas)
  On irrigation, money 816-820

REEK, G. J
  Excused 393
  Favors amendment of Hartman to Sec. 2, proposition 14—suffrage 341
  Offers amendment to Sec 4, proposition 15—salary of executive officers 425
  Offers amendment to proposition 9—militia 252
  Offers to amend Sec 9, line 4—Bill of Rights 252
  On State institutions 867-8, 859
  Supports Clark amendment for substitute to Sec. 2, proposition 14—suffrage 353

RICKARD, J. E
  Endorses Dixon's opposition to amendment for Sec 13, proposition 26—judicial districts 283
  Excused 155
  Favors Bickford amendment to Sec. 2, proposition 14—suffrage 451
  Favors Burleigh substitute for Sec. 2, proposition 14—woman's suffrage 364-5
  Favors Hammond amendment to Sec 4, proposition 10—salary of executive officers 447
  Favors Hershfield amendment to Sec 19, proposition 10—power of Board of Examiners and Governor 439
  Moves to strike out Sec. 2, proposition 11, article on labor, and put in substitute 241
  Moved that Sec. 2, proposition 11, article on labor, be stricken out 241
  Moves to open Convention with prayer 18
  Objects to additional Clerks 46
  Objects to Committee of Credentials 17
  Objects to longhand transcript 58-59
  Offers amendment to Sec. 2, proposition 18—seat of government 411-412
  Offers resolution on appropriations 60
  On corporation elections and regulations 713, 720, 722
  On estimate of new counties 664
  On location of capital 772, 788, 793, 727-28, 738-9
  On public lands (school) 838
  On school elections 529-30
  On school lands 521-22
  Opposes amendment of Middleton to Sec 29, proposition 26—salary of Justices and Judges 296
  Opposes amendment to convict labor 204
  Opposes Collins amendment to Sec. 29, proposition 26—salary of Justices and Judges 300
  Opposes consideration of Sec. 30—Bill of Rights 141
  Opposes Collins amendment to Sec. 4, proposition 10—salary of executive officers Favors original Sec 4 443
  Opposes Hershfield amendment to Sec 4, proposition 10—salary of executive officers 427
  Opposes Joy amendment to Sec. 2, proposition 14—woman suffrage 461
  Opposes Marshall amendment to Sec. 2, proposition 27—revenue and taxation 484
  Opposes Sec. 1, proposition 27—revenue and taxation 468
  Opposes Sec 30—Bill of Rights 143
  Opposes to recommit proposition 21, judiciary, to Judiciary Committee 327
  Opposes whole scheme of longhand record 42
  Presents Education Committee report 64
  Questions Robinson militia amendment 188
  Reports proposition 17, on public schools, school lands and funds 88-89
  Supports amendment of Mr. Parberry's to Sec. 13, proposition 26—judicial districts 283
  Supports his amendment to Sec 2, proposition 18—seat of government 414, 415
  Supports increase in Committee on Government 29
  Supports original Preamble 248
  Supports postponing Preamble vote 185
  Supports printing of minority reports 70
  Supports striking out Sec 2, proposition 11—article on labor 241
  Supports substitute for Sec. 2, proposition 11—article on labor 241-2

ROBINSON, J. C.
  Debates grand jury system 110-112

ROBINSON, J. C.—Continued ... Page

- Excused ... 393
- Favors Toole substitute, as amended by Hartman and Clark, for Sec. 2, proposition 14—suffrage ... 397
- Favors that proposition 21 be recommitted to Judiciary Committee—judiciary ... 326
- Moved to amend Sec. 23, jury system—Bill of Rights ... 266
- Objects to amendment by Warren to Sec. 10, proposition 14—suffrage—passing of laws by Legislature ... 400-401
- Objects to amendment and also new section to proposition 21—divorces ... 325-26
- Objects to amendment of Whitehill to Sec. 16, proposition 21—person eligible to Judge of District Court ... 317
- Objects to introduction of Sec. 39, proposition 26—trial of impeachments ... 309
- Objects to hiring of extra Clerks ... 72
- Objects to longhand transcript of proceedings ... 54-5
- Objects to going into debt for Convention expenses ... 43-44
- Objects to opening Convention floor to visitors ... 80
- Offers amendment to Sec. 4, proposition 10—salary of executive officers ... 427
- Offers amendment to proposition 9—militia ... 188
- Offers amendment to Sec. 10—Bill of Rights ... 119
- Offers amendment to Sec. 10, proposition 14—rights of suffrage. Robinson withdraws amendment ... 465
- Offers amendment to Sec. 13, proposition 21—judicial districts ... 314
- Offers amendment to Sec. 13, proposition 26—judicial districts ... 294
- Offers amendment to Sec 15,—criminal defense ... 157-8
- Offers amendment to Sec. 17—criminal defense ... 157
- Offers amendment to Sec. 18—Bill of Rights—person testifying against himself ... 262
- Offers proposition on water rights ... 533
- Offers substitute section on railroad passes ... 584
- On corporation liability ... 705-7
- On election and term of County office ... 689, 687
- On fires on State lands ... 538
- On legislative apportionment ... 600
- On limiting debates ... 489-90
- On location of capital ... 789, 756-60
- On per diem of Legislators ... 602
- On railroad passes to public officers ... 548-50, 540
- Opposed to amendment of Whitehill to add Sec. 38—affidavit of Judge of District or Supreme Court for salary ... 308
- Opposes amendment to Sec. 13, proposition 21—judicial power ... 225-6
- Opposes Blackwell address question ... 79
- Opposes Burleigh amendment to Sec. 8, proposition 14—suffrage—who not allowed to vote ... 400
- Opposes Burleigh amendment to Sec. 1, proposition 27—revenue and taxation ... 468
- Opposes Collins resolution on Chief Stenographer ... 36-38
- Opposes Marshall amendment to Sec. 11, proposition 14—laws allowing women to vote ... 406
- Opposes Reek amendment to Sec. 4, proposition 10—salary of executive officers ... 425-26
- Opposes Sec. 1, proposition 11—article on labor ... 240
- Opposes Sec. 30—Bill of Rights ... 143-146
- Opposes substitute for resolution 7, relating to Chief Stenographer ... 235-36
- Opposes 2nd division of substitute for Sec. 2, proposition 14, by Hartman—suffrage ... 387
- Recites inconsistency in criminal defense sections ... 160
- Reports on ordinances ... 627
- Suggests revision of grand jury system ... 101
- Supports amendment to Sec. 23, jury system—Bill of Rights ... 266-7
- Supports amendment of Collins to Sec. 29, proposition 26—salary of Justices and Judges ... 297-98
- Supports his militia amendment ... 188-9
- Supports Joy's amendment to Sec. 29, proposition 26—salary Judges Supreme Court ... 306
- Supports open elections ... 98

ROTWITT, L.

- Reports on suffrage and qualifications to hold office ... 75
- Submits report on suffrage ... 67

RUGER, GENERAL — Page
- Directs Convention to military reservations 487-488

SARGENT, F. E.
- Favors Burleigh substitute for Sec. 2, proposition 14—woman suffrage 367-8
- Favors grand jury system 116-117
- Favors Hartman amendment to Sec 2, proposition 14—suffrage 340
- Objects to Sec. 5, payment of employees 213
- Offers amendment to Preamble 90
- On corporation elections and regulations 722
- On legislation 547
- On water tax question 506
- Opposes Sec. 30—Bill of Rights 142-3
- Supports Hartman amendment to Sec. 2, proposition 14—suffrage 334
- Supports Marion amendment to Sec. 2, proposition 14—suffrage 357-8
- Supports private armed forces 131

SCHMIDT, LEOPOLD
- Offers amendment to Preamble 91, 183
- Offers amendment to Sec. 2, proposition 14—suffrage 463

STAPLETON, G W
- Excused 106-7
- Favors amendment to Sec. 17—deposition of witnesses 260-61
- Further opposes Marion amendment to Sec 2, proposition 14—suffrage 354-5
- Moves to add a Clerk to Judiciary Committee 33
- Objects to Hartman 2nd division of substitute for Sec. 2, proposition 14—suffrage 389
- Objects to increase in any committee 28
- Objects to longhand transcript 58
- Objects to 2nd division of substitute for Sec. 2, proposition 14—suffrage 386
- Offers amendment to Sec 19, proposition 21, relating to County Attorney 323
- On corporation elections and regulations 721
- On corporation liability 703
- On irrigation water rates and taxes 554-5
- On public water 895-96
- Opposes Collins amendment to Sec. 29, proposition 26—salary of Justices and Judges 298-9
- Opposes Hartman amendment to Sec. 2, proposition 14—suffrage 344-6
- Opposes new section to proposition 21—divorces 325
- Opposes Marion substitute for Sec. 2, proposition 14—suffrage 355
- Opposes striking out Sec. 17—deposition of witnesses 260-61
- Opposes striking out Middleton motion to subdivision 2 of Sec. 2, proposition 14—persons convicted of crime not allowed to vote 361
- Supports convict labor 206
- Supports Knowles militia amendment 192
- Wants employees informed of pay situation 44

STEWART (of Nevada)
- On irrigation and mining and money 803-16

STULL, REV. MR
- Offered prayer 18

TAYLOR, WILLIAM
- Resigns as Assistant Chief Clerk 77

TOOLE, J. K.
- Accepts amendment to proposition 21, judiciary, to recommit to Judiciary Committee 326
- Accepts amendment of Burleigh to Sec. 10, proposition 14—suffrage—passing of laws by Legislature 403-404
- Accepts Burleigh amendment to recommit proposition 21, on judiciary, to Judiciary Committee 328
- Accepts Dixon amendment to Rule 29 29
- Believes Order of Business and Rules under one head 24
- Defines rule regarding general file 69
- Desires President assign clerks as needed 33-4
- Explains action of Committee on Rules 26

TOOLE, J. K.—Continued Page
- Favors Collins amendment to Sec. 29, proposition 26—salary of Justices and Judges 301
- Favors foreign property owners 128
- Moves to amend Sec. 10, proposition 14—suffrage—passing of laws by Legislature 403
- Moves to recess 31-2
- Moved to recommit proposition 21, judiciary, to Judiciary Committee 326
- Moves that resolutions be printed at once 30
- Objects to increase in Committee on Apportionment and Representation 27
- Offers amendment to Sec. 1, proposition 11—article on labor. Toole offers another amendment to same 239
- Offers amendment to Sec. 2, proposition 27—revenue and taxation. Discusses his amendment 482
- Offers substitute for Sec. 2, as amended by amendments of Hartman and Clark—suffrage—proposition 14. Toole discusses his substitute 395-396
- Offers amendment to Sec. 13—irrigation 148
- Offers amendment to Sec. 15—irrigation 148
- Offers amendment to Sec. 15—criminal defense 160
- Offers amendment to Sec. 16—deposition of witnesses 167
- Offers amendment to subdivision 2 of Sec. 2, proposition 14—persons convicted of crime not allowed to vote 362-3
- Offers subsection 30—Bill of Rights 139
- Offers amendment to Labor Bureau section 197, 199
- Offers amendment to oath of office 594-95
- Offers resolution on Committee of Rules 23
- Offers section on railroad passes 572
- Offers resolution on tax exemption 49
- On Convention proceedings 921
- On corporation liability 701-2, 707-8
- On custody of original Constitution 967
- On deposition of witnesses 162, 161
- On irrigation water rates and taxes 551-52
- On legislative apportionment 597-8-9
- On length of legislative session 603
- On limiting debates 489
- On location of capital 772, 794, 741-44
- On Mexican ores 673-4
- On mining claim taxation 494-495
- On passage of legislation 619
- On railroad passes 591
- On representation 943-944
- On sale of public lands (school) 844-5-6, 849
- On senatorial representation 622-24, 640
- On water rights and taxes 569-70
- Opposes amendment to Sec. 17—Bill of Rights 255-257
- Opposes amendment to convict labor 204-5
- Opposes grand jury system 114-115
- Opposes Warren amendment to Sec. 10, proposition 14—suffrage—passing of laws by Legislature 401-402
- Opposes proposition 15—Bureau of Agriculture 216
- Opposes Sec. 39, proposition 26—trial of impeachments 716
- Opposes to a certain extent, Bickford amendment, Sec. 2, proposition 14—woman suffrage 456-457-458
- Opposes Whitehill amendment to Sec. 15, proposition 26—writs of error 295
- Points out that rules of Old Convention govern 24
- Points to Rule 23 on printing of reports 71
- Questions channels of resolution on Chief Stenographer 42-43
- Reports from Committee on Legislative Departments on resolution 4, by Watson 419-420
- Reports from Committee on Rules 25
- Reports on pay of extra Clerks, and expenses 954-5
- Reports proposition 13, on boundaries 186
- Reports proposition 19, on legislative departments 133-137
- Reports resolution limiting debate 488
- Reports on resolution 12—suffrage 186
- Reports resolution 13, on appropriations 186
- Reports resolution 19, re. State Examiner 89-90
- Requests rearrangement of seats in Convention 46
- Requests addition of Green as Assistant Sergeant-at-Arms 26

TOOLE, J. K.—Continued Page
Submits report of Legislative Committee on Resolution 67
Speaks, and accepts honor 14
Suggests postponing debate on Sec. 14—Bill of Rights 124
Supports amendment to Secs. 13-15—irrigation 148-9
Supports original Sec. 13—irrigation 156
Supports Collins resolution on pay of Chief Stenographer 40
Supports committee report on Preamble 95
Supports extra Clerk question 73
Supports longhand transcript 56-7
Supports original Preamble 247-8
Withdraws his substitute Sec. 30—Bill of Rights 140

TOOLE, J R.
Discusses Sec 2, proposition 18—seat of government 416-417
Excused 63, 67
Favors proposition 21 be recommitted to Judiciary Committee 327
Moves election of extra officers 24
Offers amendment to Bureau of Labor section 196
Offers amendment to convict labor section 199-200
Offers amendment to Sec 3, proposition 27—revenue and taxation 478-479
Offers new section, to be called Sec. 3, proposition 11—convict labor 245
Offers resolution for Committee on Labor 30
Offers resolution on resolutions 61-2
On location of capital 778, 734-6, 786-7, 728
On County Commissioner Boards 668-9
On corporation election and regulations 721-2
On irrigation of arid lands 679-80
On public water 897, 900
On State institutions 863-4
On County Superintendent of Schools 692
Opposes amendment to Sec 25, rights of persons of foreign birth—Bill of Rights 268
Opposes Burleigh amendment to Sec. 11, proposition 27—revenue and taxation 468-469
Opposes Hartman amendment to Sec. 2, proposition 14—suffrage 336-7
Opposes Loud substitute for Secs 2 and 3, proposition 27—revenue and taxation 471
Opposes private armed forces 129-30
Reports for Committee of the Whole 582-3
Reports on mines and water rights 670
Seconds nomination of Todd 15
Supports convict labor amendment 204
Supports Labor Bureau section 197
Supports eight-hour day 213-4
Supports his previous resolution to Sec. 2, proposition 11—convict labor 242-3
Supports his resolution on labor 30
Withdraws amendment, convict labor 209

WALKER, L A (Secretary of Territory)
Calls Convention to order July 4, 1889 13

WARREN, CHARLES S
Accepts amendment of Whitehill to Sec 16, proposition 21—person eligible to Judge of District Court 317
Discusses his amendment to Sec 10, proposition 14—suffrage—passing of laws by Legislature 401
Excused 40
Favors Hammond amendment to Sec. 4, proposition 10—salary of executive officers 446
Nominate substitute officers by a suitable resolution 21
Objects to "open" in open elections 98-99
Offers amendment to Sec 1, proposition 27—revenue and taxation 482
Offers amendment to Sec 2, proposition 18—seat of government 411-412
Offers amendment to Sec. 2, proposition 18, relative to seat of government 411-412
Offers amendment to Sec 2, proposition 18—seat of government 416
Offers amendment to Sec. 4, proposition 10—salary of executive officers 447
Offers amendment to Sec. 10, proposition 14—suffrage—passing of laws by Legislature 400-401

WARREN, CHAS. S.—Continued Page

- Offers amendment to Sec. 13 on concealed weapons 119-20
- Offers amendment to Sec. 16, proposition 21—person eligible to Judge of District Court 315
- Offers application of Blackwell to address Convention 78
- Offers substitute to Preamble 184
- On importation of ores 582
- On Mexican ores 672
- On senatorial representation 634-5
- On State institutions 860
- Opposes Robinson amendment to Sec. 13, proposition 26—judicial districts 295
- Presents memorial by Whitford 67
- Reports on order of propositions in Constitution 949-50
- Supports amendment by Clark to Sec. 2, proposition 14—suffrage 357-59
- Supports private armed forces 129

WATSON, W. H.

- Explains minority objections on Stenographer pay 53
- Offers amendment to Sec. 11, proposition 14—laws allowing women to vote. He further amends amendment to same 407
- Offers amendment to Sec. 11, proposition 14—laws allowing women to vote 405
- Offers resolution on trusts 36
- Offers resolution on printing of laws 35
- On railroad passes to public officers 542
- Recalls amendments to Bill of Rights 179
- Reports (minority) on printing 68
- Submits minority report on printing 65

WEBSTER, CHARLES M.

- Excused 35, 212

WHITEHILL, H. R.

- Amends line 4, Sec. 9, Bill of Rights 252
- Desires committee Preamble 92-3
- Excused 106
- Favors Warren amendment to Sec. 10, proposition 14—suffrage—passing of laws by Legislature 403
- Moves to amend amendment of Sec. 29, proposition 26—salary of Judges of Supreme Court 98
- Offers amendment to substitute by Parberry for Sec. 13, proposition 26—judicial districts 294
- Offers amendment to Labor Bureau section 198
- Offers amendment to Sec. 1, proposition 18—State institutions and public buildings 411
- Offers amendment to Sec. 8, proposition 14—who not allowed to vote 466
- Offered amendment to Sec. 15, proposition 26—writ of error 295
- Offers amendment to Sec. 16, proposition 21—person eligible to Judge of District Court 317
- Offers amendment to Sec. 19, proposition 10—reports of executive officers 448
- Offers amendment to Sec. 23, proposition 26—appeal from Justice Courts 296
- Offers aendment to Sec. 25, right of persons of foreign birth—Bill of Rights 268
- Offers amendment to Sec. 36, proposition 26—Trial Judge 308
- Offers resolution on adoption of part of Constitution of 1884 49-50
- Offers section, to be No. 38, proposition 26—affidavit of Judge for salary 308
- On corporation elections and regulations 721-2
- On Constitutional amendments 653
- On County Superintendent of Schools 691
- On location of capital 791-92, 746
- On property rights of women 586-7
- On religious tolerance 877
- On State institutions 867, 869-70
- Opposes amendment to Sec. 25, rights of foreign born persons—Bill of Rights 269
- Opposes Blackwell address question 79
- Opposes Burleigh substitute for Sec. 2, proposition 14—woman suffrage 365-6
- Opposes Collins amendment to Sec. 29, proposition 26—salary of Justices and Judges 303-4
- Opposes convict labor 205-6

WHITEHILL, H. R.—Continued Page
Opposes Hershfield amendment to Sec. 19, proposition 10—power of Board of Examiners and Governor 437-438
Supports grand jury system 108-109
Supports substitute of Collins for Sec. 13, proposition 26—judicial districts 276-79
Supports his amendment to Sec. 15, proposition 26—writs of error 295
Supports his amendment to Sec. 23, proposition 26—appeal from Justice Courts 296
Supports Winston amendment to Sec. 8, proposition 21, relating to Chief Justice 312-3

WINSTON, G. B.
Offers amendment to Sec. 2, proposition 10—election of executive officers..423-424
Offers amendment to Sec. 8, proposition 21, on judiciary, relating to Chief Justice 312
Offers amendment to Sec. 10—Bill of Rights 118
Offers amendment to Sec. 11, proposition 10—bills passed by Legislature. Winston supports his amendments 433
On effective dates for laws and introduction of bills to Legislature 606
On legislative vacancies 613
On passage of bills in Legislature 608
On passage of legislation 620

WITTER, A. C.
Moves to amend amendment in line 4, Sec 9—Bill of Rights 252
Offers proposition on State institutions 859
On sale of public lands (school) 844-847
On State institutions 859-60
Opposes substitute for Sec 2, proposition 11—convict labor 244
Requests permission for filing minority report on labor 66
Supports amendment to Sec. 16, proposition 21—judicial power 225

GENERAL INDEX

Page

- Absence of Judge to work forfeiture 308
- Action, Not abated by admission of State 786, 911
  - Limitation not affected by admission of State, 785, 905
  - Pending on admission of State 785, 905, 906
- Address of acceptance by Clark 21
- Address of acceptance by Toole 14, 15
- Admission of State, Action pending on 785, 905-6
- Administration; Examiner to examine and report 613, 614
  - Trust funds invested—limitations 611
- Agriculture and Commerce bureau recommended 75
- Agriculture Committee, report on Resolution 3 52
- Agriculture, Prop. 15 referred to Convention 216
- Alexander, Samuel, temporary Sergeant-at-Arms 15
- Appeal, Writs of Error and, amendment and debate 295-6
- Appointive power of Governor 428
- Apportionment and Representation:
  - Committee Report 913
  - Committee on, increased 27
- Apportionment—number of representatives 600-1
- Appropriations:
  - By Legislatures 60
  - Funds, for illegal uses 480, 516
  - Regulations 134
  - Resolution reported back 170
  - Resolution 13 reported by Committee 186
  - Limitation on Assembly 382
  - To be approved by Governor 434
  - State purposes only 611
  - Paid how and when 611
- Arid Land, report by Irrigation Committee 137
- Armed Forces: Sec. 30 (Bill of Rights) debate 139, 147
  - "Bill of Rights" debate 129, 131
  - Sub. Sec. 30 offered 139
  - "Bill of Rights" final passage 270
- Assembling hours of 96-97
- Assembly and petition for redress, "Bill of Rights," final passage 270
- Bail by Surety: "Bill of rights" 125
  - "Bill of Rights," final passage 263
- Bills approved or vetoed by Governor, amendments and debate 433
- Bill of Rights, amendments and debates 96, 131, 139, 148
  - Amendments reported by Committee of Whole 181
  - Committee report referred to Printing Committee 47
  - Prop. 1, amendments and debate on final passage 250, 271
- Blacklisting, Resolution referred 61
  - Resolution reported by Committee 176
  - of employees, referred to Convention 215-6
  - Prohibited 856
- Boundaries Committee, recommend provisions 75
  - Report 169
- Boundaries, Prop. 13 reported by Committee 186
  - Prop. 13 on final passage 186-7
  - Prop. amended 917
- Board of Examiners, Composed of and duties 436-40
- Board of Equalization, personnel and duties 480
- Board of Education, to control University and State Educational Institutions 530
  - Consist of certain officers 530-2
- Bonds, valid on admission of State 785, 911
- Bribery, conviction by either house 612
  - Punishment of 592
  - To be defined and penalized 612
  - Influencing public officers 612
- Bureau of Agriculture and Commerce, recommended 75

Page

- Bureau of Labor, recommended 65
  - Prop 11, amendment and final passage 238-40
- Business, order of 23
- Capitol Building, location of 132
- Capitol, location 411-417
- Location question, date set 533
  - Location 727-729
  - Location 741-784
  - Location 786-802, 826-827
  - Location 857-859
- Cases, Territorial, U S Courts succeed to certain 786, 911
- Census enumeration provision 913
- Charitable perpetuities 538, 589
- Chartering certain businesses 615
- Chief Clerk, Assistant to, resignation of and reappointment 77
  - Nomination and election of 15
- Child Labor, amendments and debate 210-11
  - Legislation recommended 65-66
- Chinese labor, proposition referred 60-61
  - Habitation restrictions 698-9
  - Proposition 7 reported by Committee and re-referred 214-5
  - Proposition 7 reported by Committee 177
- Cities, towns and school districts, debts of limited 894
- Cities and towns, classes of 717
- City or County debt, State funds not used for 643
- City, County and Town Committee report on protest petition of Dawson County 383
- City, County and Town, Committee on placed at seven 27
- Claims, against territory assumed by State 785, 911
  - Convictions, etc., to remain in effect 784, 904
  - Not affected by admission of State 785, 910
- Clerks and District Judges, qualify when 912
- Clerk of District Court, duties 785, 905
  - As jury commissioners 784, 904
- Congratulations of Montana returned to sister states 19
- Congress, Representatives, election of 913
  - Amending rules, regarding 51
- Committee, Apportionment and Representation increased 27
  - County, City and Town Government placed at seven after debate 27
  - County, City and Town government 274
  - Distribution of work 24-5
  - Finance, Special Clerk for 33
  - Finance, request extra clerk 45
  - Irrigation. 33
  - Irrigation, number on 52
  - Irrigation, appointed 66
  - Judiciary, Special Clerk for 33
  - Labor, resolution re, 30
  - Printing, requests mileage statements 34
  - Public lands, report 246
  - Rules and Order of Business 23
  - Rules, report adopted 30
  - Rules, regarding 51
  - Special, to consider Resolution No. 7 90
- Commerce and Agriculture, Bureau of recommended 75
- Common Carriers, Railway 700
- Constitutional amendments, procedure 577-578
- Constitutional changes "Bill of Rights" 97-98
- Constitutional Convention, procedure 576-77
  - Requires certain vote by Legislature 648, 652-55
- Constitutional Measures, revision and phraseology of 839, 841
- Constitutional Provision "Bill of Rights" 128
- Constitution, Election of county officers and date effective 627-8
  - Of State officers at same time 627-8
  - Canvass of votes 627
  - Form of ballot for, 627
  - By qualified electors 627
  - Places 627

Page

  - For adoption of, date 627
  - Ordinance 657
  - For ratification, ordinance and officers 873, 876, 879, 891
- Constitution of 1884 Articles Resolution referred 49
- Constitution, ordinances, ... 627-8
- Constitution of U. S. adopted by Convention 22
- Contract labor proposition referred 62
  - Proposition reported by Committee 176
  - Section supported 215
- Contracts, corporation liability under 581
  - Not affected by admission of State 785, 910
  - of territory assumed by State 785, 911
  - Valid in territory, valid in State 784, 904
- Convention, Assistant Sergeant-at-Arms, salary fixed 41
  - Called to order July 4, 1889 13
  - Chief Clerk of, temporary nominations, and election 15
  - Long hand report of proceedings 36, 45
  - Members and employees 11, 12
  - Organization, temporary 13
  - Oath to members of, ... 15, 16, 18, 22
  - Officers of, election of permanent 19-20
  - 1884, Members of, granted floor privileges 32
  - President of, temporary nominations for 13
  - President of, temporary election of 14
  - President of, election of, permanent 19-20
  - Seating of members 23, 46
  - Stenographer, temporary election of, ... 16
  - Sergeant-at-Arms, temporary, ... 15
- Convict Labor, Amendment and debate 199, 209
  - Prop. 11, debate on final passage 240-44
  - Proposition referred, ... 50
  - Proposition returned by Committee 176
- Corporation Charters, prior rights 579
  - Regulations 579
  - Restricted 699-700
  - Revoked how 699-700
  - Revoked 579
  - Validity 699-700
- Corporations, consolidated in other States, jurisdiction 581
  - Contracts of liability 581
  - Defined 581
  - Defined 712
  - Dues, liability 581
  - Election of officers and voting 713-14
  - Foreign, licensing, requirements 711
  - In combine, prohibited 581
  - Liability of for industrial accident 581
  - Liability remains on transfer or lease 581
  - Liability on transfer of property 611
  - Liable for personal injury to employee 711
  - Liability of stockholders 701, 711
  - May consolidate under certain conditions 711
  - Municipal, Articles, amendments by Committee of the Whole 715-19
  - Officers, election of, ... 720, 724
  - Officers, limited to one corporation 719
  - Other than municipal 700
  - Other than municipal 76
  - Private, liability of stockholders 712-13
  - Stockholders may vote 579-80
  - Stockholders right to vote 699-700
  - Stock increased by law 701
  - Subject to legislative regulation 701
  - Trusts forbidden and penalty 713
- County Attorney amendment 377-380
  - County, City and Town Government, Committee on, limited to seven 27
- County Commissioners, election of 717
  - Term and meetings 666, 669
  - Term of office under enabling act 683-4

Page

- Counties divided into townships, etc. 665
- Counties, indebtedness of, taken by State 303
  - New, Resolution No. 14 60
  - New, establishment of 48
  - New, valuation required for 660-4
- County Elections, qualifications of, electors for 658-9
- County officers: Resolution offered and referred 35
  - Term of office 695-97
  - Eligibility and qualifications 693-95
  - Number and duties 684-93
  - Compensation provided for 697
  - Offices, location 538
  - Offices, to be at county seat 645
- County or City debt, State funds not used for, 643
- County, petition from Glasgow for new valuation of 272
  - of State and regulations governing 273-4
  - Sub-division of 716
  - Seat removed, how 658
  - Segregation authorized 657-8
  - Treasurer, term of 717-718
  - To be named 698-9
  - Valuation to limit establishment, 60
- Courts execute territorial court judgments 784, 904
- Courts of Justice "Bill of Rights" 99
- Court matters transferred to State 786, 911
- Courts, probate non-district 785, 905
  - Seals revert to District Courts 785, 910
- Credentials, debate on necessity of Committee on, 16-18
- Crimes, against territory prosecuted by State 785, 905
  - Not affected by admission of State 785, 910
  - Pending on admission of State 785, 910
- Criminals, not electors 400
  - Reformation of Bill of Rights, final passage 268
  - Testimony by Bill of Rights 124-125
- Criminal defense "Bill of Rights" final passage 254
- Criminal law "Bill of Rights" debate 125-126
- Criminal offenses "Bill of Rights" final passage 250
- Criminal prosecutions "Bill of Rights" 124
- Dawson City, Protest Petition,
  - City, County and Town organization,
  - Committee report on 383
- Debate limit in Committee of Whole 488-490
- Debt, Cities, towns and school districts limited 894
  - Counties limited to certain amounts 892-894
  - Created for specific purpose 891
  - Interest on public debt provided for 891
  - Penalty, "Bill of Rights" final passage 253
  - Penalty "Bill of Rights" 119-120
  - Public, limited to state activities 891
  - Territorial, assumed by state 785, 911
  - Territorial, assumed by state 878
  - Territorial ordinance referred 48
- Definition, "May and Shall" 726
- Definition, "May and Shall" 826
- Deposition witnesses, "Bill of Rights" final passage 254-262
- Divorce Suit for citizens of State only 310
- Disbursement of funds to be accounted for debate 435-436
- District Courts, Clerks of as jury commissioners 784, 904
- District Judges and clerks, qualify when 912
- Dueling prohibited 575
- Educational Board to consist of certain officers 530, 531-32
- Educational property exempt from taxation 381-382
- Education, Committee report on public schools 88
  - Proposition referred 60
  - Proposition 17 reported by Printing Committee 177
  - Proposition 17 520, 532
  - Report received and filed 64
- Eight hour day section, amendment and debate 213-4
  - Offered for final passage 245

Page

- Elections, ballot and qualifications 330-375
  - "Bill of Rights" 98-99
- Election, Chief Clerk, Todd as temporary 15
  - Constitutional ratification, ordinance and officers 873-876, 879-891
  - Days, Military duty on 400
  - General Resolution referred 90
  - General resolution reported by Committee 272
  - Legislature, First State 912
  - Laws to be fair and pure 400-404
  - Majority vote to elect 465
  - Officers of Executive Department 423-424
  - Open, "Bill of Rights," final passage 250
  - Permanent officers 19-20
  - Permanent President 19-20
  - Temporary president (Jos K. Toole) 14
  - School, women to vote at 463-5
  - Stenographer temporary 16
- Electors, qualifications of, 448-463
  - Arrest at polls, privileged from 400
  - Criminals are not 400
  - Government service not to disqualify 400
  - Idiots are not 400
  - Qualifications, discussion 330-375
  - Qualifications of, for county elections 658-9
  - Qualifications of, substitute amendment and debate 384-392, 394-400
- Employees, blacklisting 215-6
  - Convention 11-12
  - Convention, discharge of 71
  - Election of additional 25
  - Employment and pay of Legislative 610
  - Necessity for, debate 71-74
  - Objections by members to assignment of 33-4
  - Payment of 213
  - Resolution for additional 23-4
  - Stenographers pay for copy of proceedings 36-45
  - Sergeant-at-Arms, assistant, salary fixed 41
- Enabling Act 3-10
- Equality of man, "Bill of Rights" 98
- Equalization boards and duties 383
  - Personnel and duties 480
- Examiners' Board, composed of and duties Amendment and Debate 436-440
- Executive Committee report 64
- Executive Departments, in Committee of Whole 423-440
  - Proposition 10, on final passage 441-448
  - To consist of whom 423
  - Qualifications of officers of 424
- Executives, Monies received and disbursed, to account for 435-436
  - Officers, term of office 917-20
  - Power vested in Governor 428
  - Salaries of 424-27
  - Under jurisdiction of Governor 431
- Exempted properties enumerated, amendment and debate 470-479; 481-487; 490-492
- Ex Post Facto law, "Bill of Rights" final passage 253
  - "Bill of Rights" debate 119
- Extraordinary sessions of Legislature to be called by Governor 433
- Federal relation ordinance 922-23
- Fees probate judge repealed 785, 905
- Felonious use of public money 383
- Finance, borrowed money used for specific purpose 643
  - City or district debt based on property value 643
  - Committee report on Resolutions 179-180
  - Committee requests clerk 33
  - Committee request extra clerk 45
  - Committee report on Revenue and Taxation 381-383
  - Compensation county and city officers fixed for term 642
  - Debt created by legislative manner and limitation 643
  - Municipal debt for water supply 642
  - Public debt based on property valuation 643
  - Public indebtedness 643-4

Page
  Public funds limited to public activities 643
  State funds not used for county or city debt 643
Fire prevention legislation 537-538; 587-589
Fire prevention, public lands 645
First Legislative Assembly, election of 912
Floor privileges granted Supreme Court and Convention of 1884 32
Foreign corporations, requirements and limitations 580
Foreign property owners 'Bill of Rights," final passage 268-270
  "Bill of Rights," debate 126-128
Freedom of action "Bill of Rights" 128
Freedom of Speech "Bill of Rights," Amendment and debate 118-119
Free Speech "Bill of Rights," final passage 253
Funds, disbursement of to be accounted for, debate 435-6
Gambling, prohibited in Resolution 76
  Proposition No. 16 reported by Committee 233
  Restricted by Resolution 76
General Election Resolution reported by Committee 272
General rights of people "Bill of Rights" final passage 270
Great Falls invites Convention to banquet 45
Glasgow, New County valuation, petition from 272
Government, by people "Bill of Rights" 250
  by people "Bill of Rights" 96-97
  Committee of seven on county, city and town 27
  Property exempt from taxation 381-382
  Lands, memorial to Congress on 62
  Service not to disqualify voters 400
Governor, appointive powers 428
  Appropriations, to approve 434
  Approve or veto bills, power to, Amendment and debate 433
  Commander in Chief of Militia 428
  Executive power vested in 428
  Incapacity of, succeeded by Lieutenant Governor 434
  Joint orders and resolutions of Legislature 612
  Legislature, may convene 433
  Pardon, duty after granting, amendment and debate 429-431
  Pardon, power to, amendment and debate 429-431
  Progression to chair of, 434
  Supervisory power over executives 431-32
  Salery, debate 442-443
  Veto power over joint Resolutions, etc. 612
Grand jury "Bill of Rights" Amendment and debates 99-118
  System "Bill of Rights" final passage 251-253
Great Seal of Montana, custody in Secretary of State 434
Habeas Corpus rights "Bill of Rights" 125
  Writ "Bill of Rights" final passage 263
Helena Journal excluded from floor privileges 739-741; 801-802
Husband and wife, property rights 575
  Property rights of 645-6
Homestead laws, legislation 538
  Authorized 645
Hours for assembling, discussion 50
Idaho congratulates Montana on progress 802
Idiot not entitled to vote 400
Indebtedness, counties, taken by State 138
  Limit, requested by Harris and Company, Chicago 64
  Water supply allowable 275
Industrial Accident, liability of corporations 581
Impeachment, State Officers 134-5
  Judges and State Officers 308-9
Importation of lead ore, memorandum to President of U. S. 582
Imprisonment, witnesses, "Bill of Rights" 124-125
Indian Lands not taxed 878, 922
  Ordinance referred 48
Indian reservations, jurisdiction 533, 628
  Resolutions reported 627
Interstate Commerce Commission provides for 700
Institutions located in various counties 859-864-866-871
Invitation of M. E Church to attend temperance lecture 31
Involuntary servitude "Bill of Rights" 128

Page

Irrigation and Mining, Stewart, U. S. Senator on 803-816
Irrigation and Money systems, Reagan U. S. Senator on 816-20
Irrigation and water rates 550-571
Irrigation, canals taxation debate 497-513
  Major Powell, Director U. S. G. O. on, ... 820-824
  Montana civil engineers, present question 418
  Petition by S. of C. E. reported adversely 488
  Projects regulated 1559-81
  Proposition referred 61
  Resolution offered and referred 138-139
Irrigation Committee, added to standing Committees 33
  Appointed 66
  Number on 52
  Report on Memorial 865
  Report on Proposition 8 137
  Report on Proposition 20 376
  Of U. S. discuss National problems 803-826
Jefferson, suggested as name of State 174, 176
Judge, absence of, to work forfeiture 308
  "Cooley" of Michigan visits Convention 177
  Presiding, may be a substitute 307-8
  Salary and mileage, Amendment and debate 296-307
Judgment of territorial court executed by State 784-904
Judicial Departments, Law Departments 151-155
  pardoning power 155
  Proposition 21, Amendment and debate 218-231
Judicial districts, debate 276, 294
  Amendment 377-379
Judicial officers, vacancies in, filled how 307
Judiciary Article, Amendment and debate and final passage 276-329
Judiciary Committee, report referred 150
  Report Proposition 21 and final passage 377-382
  Requests special clerk 33
Jury Commissioners, clerks of District Court as, ... 784, 904
Jury, trial, Bill of Rights, Amendment and final passage 264-68
  Trial by, "Bill of Rights" 125
  Trial by, ... 157-166
Justice, courts of, in Bill of Rights 99
  Through Courts "Bill of Rights" final passage 250
Justices of Supreme Court, Salary amendment 377-380
Labor bureau, amendment and debate 196-8
  Proposition 11, amendment and final passage 238-40
Labor, Chinese, referred 60-61
  Chinese, Proposition 7, report by Committee and referred 214-215
  Chinese, habitation restrictions 698-9
  Committee, Resolution adopted 30
  Recommended bureau of labor 65
  Contract, proposition reported by Committee 176
  Contract, section supported 215
  Convict, amendment and debate 199-209
  Convict, proposition 11, debate on final passage 240-44
  Importation of proposition reported by Committee 176
  Proposition referred 60
  Proposition 6 reported by Committee 177
Laws, general publication of, printing Committee minority report on 68
  Publication of general, resolution 35
Land, arid, report by Irrigation Committee 137
Land Board, to consist of what officers 528-29
Lead Ores, memorandum from Silver Bow 582
  Importation of, memorandum to President of U. S. 582
Legislation, of territory, in effect until changed by State Legislature 784, 904
  Introduced and effective, when 606-8
Legislative apportionment and term of office 597-600
Legislative assembly, authorized 133
  Compensation 133-4
  Composed how 133
  Election of officers 134
  Senate and house composed of 597-600
Legislative Articles, amendments and final passage 617-626-644-45

Page
Legislative, Department Committee report on Resolution 13 ... 67
  Report on Proposition 19 ... 133
Legislative, election for 1st assembly ... 912
Legislative, power and limitations ... 596-7
Legislative, printing and supplies under contract ... 610
  Sessions, term of ... 603-604
Legislators, arrest exemption ... 605
  Compensation may be raised when ... 604
  Extra compensation limitations ... 610
  Qualifications ... 597
  Qualification and restrictions ... 134
  Salary of ... 601-3
  State or U. S. office, may not hold ... 604
  Term of office of ... 597
Legislature, adjournment, regulations ... 605
  Appropriation bills, time limitation ... 606
  Appropriation bills, limitations ... 611
  Assemble, how and when ... 134
  Bills take a certain course ... 608
  Bills to contain only one subject ... 608
  Business, conduct of ... 134
  Employment and pay of legislative employees ... 610
  Enacting clause for every law ... 606
  Extraordinary sessions to be called by Governor ... 433
  First state election ... 912
  General Restrictions ... 135-137
  Governor may convene ... 433
  Impeaching state officers ... 134-5
  Impeachment of certain officers ... 605-6
  Impeachment power ... 605-6
  Journals to be kept ... 605
  Laws, local or special, limitation ... 609-10
  Laws, method of passing ... 606
  Laws, passage of, require majority ... 608
  Laws, revision of ... 608
  Majority of, specified ... 619-21
  Municipal activities not subject to, ... 611
  Officers, removal of those not impeachable ... 606
  President of Senate, election of ... 604
  Private interest in Legislature precludes vote ... 612
  Procedure and regulations ... 605
  Quorum may transact business ... 605
  Quorum majority for ... 134
  Revenue bills originate in House ... 611
  Sessions open to public exceptions ... 605
  Signing of bills by President and Speaker ... 610
  Speaker of House, election of ... 604
  Tax laws, power to pass ... 481
  Vacancies in legislature filled by Governor's appointment ... 613
Liability held by State, not transferable ... 611-612
Liberty of people "Bill of Rights" final passage ... 270
Licenses and taxes levied by legislature, amendment and debate ... 467-470-482-483
License tax, on persons and corporations discussed ... 481
Lieutenant Governor to be President of Senate ... 434
  To be Governor in certain cases ... 434
  Incapacity makes President of Senate Pro Tem Governor ... 434
Limitation of action not affected by admission of State ... 785-905
Liquor dealers, limitation of ... 76
Longhand report of proceedings argued ... 36-45
Lotteries prohibited ... 537, 645
Madison County, Memorial from on suffrage ... 74
Maintenance of State by taxation ... 381-382
Major Powell Director U. S. G. O. on irrigation ... 820-24
Majority of votes to elect ... 465
Members and employees ... 11-12
Memorial by Whitford referred ... 67
Memorial from Madison County on suffrage ... 74
Memorial to Congress on Government Lands ... 62
Jennie Merriam elected Assistant Chief Clerk ... 77

Page
M. E. Church, Invitation to attend temperance lecture 31
Methodist Episcopal memorial reported by Committee 233-4
Mileage, copy of report for secretary of territory 36
  Judges salary and amendment and debate 296-307
  Statements, Printing Committee, requests statements 34
Military affairs, Committee report 51
  Duty on election days 400
  Reservations and jurisdiction 488
  Reservations Resolution reported 627
  Reservations jurisdiction 681-83
  Subordination "Bill of Rights" 125
  Subordination "Bill of Rights" final passage 264
Militia, Amendment and debate 167-168
  Proposition 9, debate on final passage 187-194
  Under control of Governor 428
Mining and Irrigation, Stewart, U. S. Senator on 803-816
Mining and water rights Committee report 670-71
Mining Bureau proposition reported and rejected 383-384
Mining Bureau resolution offered 275
Mining property, taxation question 472-9-492-497
  Taxation rate 382
Money Systems and Irrigation, Reagan, U. S. Senator on 816-20
Money accountability of all Executive's debate 435-436
Montana Central Railway invites Convention to ride to Great Falls 45
Montana, Name suggested for 174-176
  State Seal, custody of in Secretary of State 434
Municipal Corporation Article amendments reported by Committee of Whole 715-719
Name suggested for State of Montana 174-176
National Resources, U. S. Senator Plumb on 824-826
New Counties, Committee report 133
  Liable for certain indebtedness 644-5
  Provided for 659-60
  Resolution referred 48
New County, valuation petition from Glasgow 272
Nomination of Alexander as temporary Sergeant-at-Arms 15
Nominations, for temporary Chief Clerk 15
  For temporary President 13
North Dakota sends congratulations 19
Oath of office, administered by Chief Justice Blake 15-16
  Administered to officers 22
  Amendments submitted 582-83
  Form of 588-89-594-95
  For public officers 535-37
  For public officers 644
  To recently arrived members 18
Occupations, taxation of 60
Office Holders, qualifications of 408-9
Office, terms of Public, resolution divided 66
  Qualifications, proposition 14, suffrage and, 329-375
  Qualifications to hold 400
Officers, compensation of county and city, fixed for term 642
  County, resolution regarding 35
  Of the convention, election of 19-20
  Other than Constitution, election of 645
  Peace, resolution 16 re-referred 66
  Salary increase of 76
  Territorial, granted floor privileges 32
  Term of office for certain 578-79
  Of U. S. not eligible for State office 575-577
  Of U. S. not to hold state office 275
Offices of U. S. and State cannot be held at same time 488
Organization, of the convention, temporary 13
Ore importation memorial, 915
  Recommitted 903
  From Mexico 671-675
Ordinances Committee report 627-8
Payment of employees, Section amendment and debate 213
Pardon board procedure, amendment and debate 429-431
Pardons, Governors duty after granting 429-31

Page

  Powers vested in Governor, amendment and debate ... 429-431
Passes, Free, resolution referred ... 48-9
  Free, resolution 10 reported by Committee ... 233
  From Railway amendments and debate ... 582-5, 589, 592-94
  From Railways prohibited ... 645
  From transportation companies prohibited ... 539-550, 572-575
Penal and reformatory Institutions ... 132
Perpetuities, limitation of ... 645
Personal property, taxation rate on ... 479, 517-8
Petition redress "Bill of Rights" ... 128
Photographer invites Convention to sit for pictures ... 80
Plumb—U. S Senator on National Resources ... 824-826
Police protection, resolution referred ... 61
  Resolution reported by Judiciary Committee ... 74
Poor Farms ... 132
Preamble, amendments and debates ... 90-96
  Committee report referred to Printing Committee ... 47
  Committee report amendments ... 177-179
  Proposition 1, amendment and debate ... 246-50
  Resolution 1 and 2 on, reported by Committee ... 64
  Resolutions submitted ... 32
  Read and amended before final passage ... 183-184
Presiding Judge may be a substitute ... 307-8
President of Senate, incapacity makes Speaker of the House Governor ... 434
  President temporary, of the Convention, Nominations for ... 13
  Election of ... 14
Press representatives given privilege of floor ... 16
Printing Committee, minority report on publication of General Laws ... 68
  Report on resolution 7 stenographer pay ... 52
  Reports, debate ... 68-71
  Requests mileage statements to be submitted ... 34
Private property "Bill of Rights" amendment and debate ... 120-124-148
  Final passage ... 253
  Not to be sold for corporate debts ... 479, 513-514
Prison Commission composed of and duties, amendment and debate ... 436-440
Prisoner awaiting trial not entitled to vote ... 466-467
Prison sentence not affected by admission of State ... 785, 910
Prisoner, treatment of "Bill of Rights" ... 125
Probate clerk, fees revert to district clerk ... 785, 905, 910
Probate matters transferred to District Court ... 786, 911
Probate Statutes apply to District Court, ... 785, 905
Progression to chair of Governor ... 434
Professions, taxation of ... 60
Prohibition, requested by M. E. Church ... 47
  Memorial reported by Committee ... 233-4
Property, defined ... 383
  Defined ... 480
  Foreign, owners of, Bill of Rights ... 126-128
  Foreign, owners of, bill of rights final passage ... 268-270
  Private, Bill of Rights, final passage ... 253
  Private, not to be sold for corporate debts ... 479, 513-4
  Private, Rights of Way over ... 376
  Rights of husband and wife ... 575
  Rights of husband and wife ... 645-6
  Rights of women ... 585-87
  Of territory transferred to State ... 785, 911
Proposition 1 Preamble and Bill of Rights, Amendments and debate ... 246-50
  1 and 2 reported correctly printed ... 65
  2 Convict Labor ... 50
  2 returned to Convention in report ... 176
  3 Contract Labor reported by Committee ... 176
  3 Contract Labor ... 62
  Public Schools ... 48
  5 Education ... 60
  5 Education reported back from Committee ... 64
  6 Labor ... 60
  6 Labor reported by Committee ... 177
  7 Chinese Labor reported by Committee ... 196
  7 Chinese Labor reported by Committee ... 177

Page
  7 Chinese Labor 60
  7 reported by Committee on City, County and Town organization 274
  8 Irrigation 61
  8 on Irrigation, reported 137
  9 Militia, debate on final passage 187-194
  10 Amendment and final passage 441-448
  10 on Executive Departments final passage 423-448
  11, 3 and resolution No. 17 reported by Committee 196
  11 article on labor amendment on final passage 238-45
  13 (Boundaries) reported by *Committee* 186
  13 on Boundaries reported 169
  14 suffrage Final Passage amendment and debate 448-467
  14 suffrage and office *qualifications* 329-375
  15 agriculture referred to Convention 216
  16 gambling reported by Committee 233
  17 on education reported 88
  17 education reported by Printing Committee 177
  18, 19, 21 and 22 reported by printing committee 184
  19 on Legislative department report 133-137
  20 reported by Committee on Irrigation 376
  21 Judiciary article, final passage 276-329
  21 reported by judiciary committee and final passage 377-382
  21 judicial departments, amendment and debate 218-231
  27 Revenue and Taxation Final passage 467-482-490-519
Public Lands, classification 628-29
  Committee report 246
  Preference to settlers 645
  Lease or sale of 628-29
  Prior rights 539
  Sold on certain conditions 828-839-841, 842-855
Public Moneys, felonious use of 383
Publication of general laws resolution referred 35
Public office not to be filled by U. S. Officer 275
Public Schools, established and maintained 520
  Free and non-sectarian 628
  Ordinance referred 48
  Regulation governing age of students 529
Qualifications, of electors amendment and debate 394-400
  Sub-amendment and debate 384-392
  For County elections 658-9
  On final passage amendment and debate 448-463
  Office holders 400
  Of electors, on final passage amendment and debate 448-463
  Office holders 408-9
  State officers 407
  Executive department, officers of 424
Railroad, assessments equalized 383
  Combines prohibited 580
  Stock issued for actual value 580
  Traffic to be non-discriminatory 580
  Definition and privileges 580
  In cities controlled by authorities 580-1
  Not to receive retrospective benefits 581
  Not to receive public aid 611
  Subject to public use 580
  Tax apportionment of, 480
  To file acceptance of constitution 580
Railway, franchise necessary in cities and towns 711
  Common carriers 700
  Consolidation prohibited 700
  Or other corporation not entitled to retrospective legislation 711
  Required to accept Constitution 701
  Right to build and operate 700
  Short and long haul regulated 700-1
Reagan, U. S. Senator on irrigation and money systems 816-820
Redress, petition for, Bill of Rights 128
Reformation of Criminals "Bill of Rights" final passage 268
Reformatory and Penal Institutions 132
Religious freedom "Bill of Rights" 98

Page
  “Bill of Rights” final passage 250
Religious Freedom, 876-878
  Tolerated 922
Religous property exempt from taxation 381-382
Religious tolerance, 628
  Ordinance referred 48
Reports, Printing of Committee 68-71
Representation and Apportionment, committee on, Increased, 27
Representative districts, may be changed 913
  Enumerated 914
Representatives, qualification 133
  In Congress—election of 913
Resolutions 1 and 2 on Preamble reported by Committee 64
  3, Irrigation Committee 52
  4, reported adversely 420
  6, minority report by Committee on City, County and town organization 274
  6, reported by Committee on City, County and Town 274
  7, referred to special committee 77
  7, Stenographer, pay reported by select committee 233-8
  7, stenographer pay 52
  8, school lands 47
  8, reported by public land committee 75
  9, New Counties 48
  9, reported by County, Town and City organization Committee 75
  10, Free passes 48-9
  10, passes reported by committee 233
  11, tax exemption 49
  12, suffrage 49
  12, reported by Committee on Suffrage 67
  12, reported—suffrage 170-171
  12, suffrage reported by Committee 186
  13, Constitution of 1884 49
  13, appropriation by legislature 60
  13, reported by Committee on Legislative Departments 67
  13, reported back adversely 170
  13, appropriations reported by Committee 186
  14, New Counties 60
  15, taxation of profession 60
  16, police protection 61
  16, re-referred 66
  16, reported by Judiciary Committee 74
  17, Blacklisting reported by Committee 176
  17, Blacklisting 61
  18, reported by County, Town and City Organizations Committee 74
  19, on State Examiner reported by Committee 90
  27, on public office holding reported by committee 488
  28, on jurisdiction over military lands 488
  Convention employees 71
  Corporations and Railroads 76
  County indebtedness 138
  Elections referred 90
  Gambling in saloons restricted 76
  Gambling prohibition of 76
  Preamble 32
  Irrigation referred to Committee 139
  Liquor dealers, limitation of, 76
  General laws, publication of 35
  Salary increase of officials 76
Resources, National, U. S. Senator Plumb. on, 824-826
Revenue and Taxation, report on by Finance Committee 381-383
  Reconsidered 550-571
Revenue and Taxation 675-681
Revision and phraseology of constitutional measures 839-841
Rights of People “Bill of Rights”, 129
  Final passage 250
Right of way over private property 376
Roads for private use “Bill of Rights” final passage 254
Rule amending resolution passed reporting of certain committees 51
Rules amendments offered and referred 193

Page

- Proposed 714
- Rules, Committee on, 23
  - Committee report adopted with amendments 30
  - Committee resolution on 51
  - Constitutional resolutions, being read at length 29
  - Report of Committee on, received and read 25-6
  - Report amended 27
  - Report submitted 65
- Sabbath observance, requested by M. E. Church 47
  - Union memorial referred 233
- Seal of Territory assumed by State 786-912
- Salary, Governor, debate 442-3
  - Judges and mileage amendment and debate 296-307
  - Judges, time limit to cases affecting 308
  - Justices of the Supreme Court 377-80
  - Not changed during term 610-11
  - Of Legislators 601-3
  - Of officials changed when 76
  - Of State executives 424-427
- Schedule article reported 784
- School district officers, special election of 529-30
- School Districts, debt for cities, towns and 894
- School funds, augmented by legislature 529
  - Cannot be used for sectarian purposes 529
  - Interest and rent apportioned 528-29
  - Investment of 528
  - Section 2 to consist of 520
- School elections, women to vote at 463-5
- School lands, controlled by land Board 528-29
  - Lease or sale of 628
  - Preference to residents 528-29
  - Resolution 8 47
  - Resolution referred to Committee on public lands 47
  - Resolution 8, reported by Committee 75
  - Sale or lease of, amendment and debate 520-528, 589-592
- Schools, non-sectarian 529
  - Public, education committee report on 88
  - Public, established and maintained 520
  - Purposes, taxes for 478
  - System for all children 878
  - Tax rate 382
- Senatorial apportionment 622-26, 629-41, 913
- Senatorial representation 651-55
- Senatorial districts enumerated 913
- Seating of members of Convention 23
- Seats of members rearranged 46
- Seal of State to be used on certain papers 434
- Seal of State in custody of Secretary of State 434
- Search and Seizure "Bill of Rights" 99
- Search Warrants "Bill of Rights" final passage 250
- Secretary of State, Custody of the Great Seal 434
- Sergeant-at-Arms, temporary, election of, 15
- Soldier or Sailor not resident 400
- South Dakota sends congratulations 19
- Slavery prohibited "Bill of Rights" final passage 270
- Speech, Freedom of, Bill of Rights 118-119
- Special committee to consider resolution 7 90
- State Examiner, resolution referred 66
- State Examiner, resolution reported 90
  - Appointed by Governor 440
- State Institutions, Committee report 132-133
  - To be established 411
- State Officers, qualifications of 407
- State Senators, election 133
- State Treasurer reports moneys on hand 383
- Stenographer, assigned to extra duty 62
  - Election of 16
  - Given additional time on transcript 921
  - Pay for copy of proceedings 36-45

Page

Pay, debate and roll call 52-60
Pay, resolution 7 reported by Committee, debate 233-8
Salary resolution 7 referred to special committee 77
Stewart, U S Senator on irrigation and mining 803-816
Stockholders, liability of corporate 701-714
Students, regulation governing age of 529
Succession of office resolution divided 66
Suffrage and qualifications final passage, amendment and debate 448-467
Suffrage committee, report on qualifications 75
Report on resolution 12 67
Suffrage, memorial from Madison County 74
Petition presented by Joy 64
Proposition in Committee of Whole 329-375
Proposition 14, and office qualifications, ... 329-375
Proposition 14 and resolution 12 reported and deferred 419-420
Resolution referred, ... 49
Resolution reported 170-173
Resolution 12 reported by committee 186
Speech by Blackwell disputed 78-80
Speech by Blackwell on woman's 80-88
Women's 915-16
Woman's, Committee report 855-6
Woman's, limited 404-8
Woman's resolution referred to committee 490
Supreme Court Justices, amendment 371-8
Salary, amendment 377-80
Supreme Court officers—regulations 307
Sunday law petition reported and tabled 383-384
Sunday observance petition from Deer Lodge 271
Taylor, William, resigns as Assistant Chief Clerk 77
Tax apportionment of railroads 480
Tax exempt properties, amendment and debate 470-479-481-487-490, 492
Tax exemption, resolution referred 49
Tax Laws, Legislative power to pass 481
Tax, license on persons and corporations, ... 381-82
Money, disposition of 479, 514-516
Rate on Mining property 382
Rate on mining property and water rights 472-9, 492-513
Rate for school purposes 382
Rates to be adjusted by legislature amendment and debate 467-470, 482-483
Taxation and Revenue proposition 27, final passage 467-482, 490-519
Taxation and Revenue reconsidered 550-571
Taxation of corporations to be perpetual 479
Taxation, due territory assigned to State 785-911
Indian lands exempt 878
Indian lands, exempt 922
Irrigation, canals, debate 497-513
Maintenance of State By 381-82
Power continuous 382
Powers invested in corporate authorities 382
Of professions on occupations 60
Rate limitation on personal property 382
Rate on personal property 479, 517-8
Rates must be uniform 479-80
Report by Finance Committee 381-83
Religious property exempt from 381-82
Taxes, on City, County and Town for their use, assessed by themselves 478
Educational property exempt from 381-82
Expended how 479-80
Government property exempt from 381-82
Paid to whom 382-83
For State are compulsory 478
For school purposes 478
Telephone and Telegraph corporations, regulations and restrictions 581
Telephone and Telegraph privileges and restrictions 711
Temperance Lecture, Invitation of M. E Church 31
Temporary organization 13
Term of office for certain officers 578-79
Term of office, County Officers 695-697

Page
  Of Legislators 597
  Succession 539
Testimony by criminal, "Bill of Rights" 124-125
Testimony of Criminal, "Bill of Rights," final passage 262-63
Territorial debts transferred to State 628
Territorial officers, granted floor privileges 32
Time limit to cases affecting judges' salary 308
Todd, Wm. H., temporary Clerk, Elected 15
Town, City and County Government Committee limited to seven 27
Treason against the State, "Bill of Rights" 118
Treason defined, "Bill of Rights," final passage 253
Treasurer's report, to embrace what 479-80
Treatment of Prisoners, "Bill of Rights" 125
Trial by Jury, "Bill of Rights" 125
Trial by Jury, "Bill of Rights," and witnesses amendment and debate 157-166
  Amendment and final passage 264-68
Trusts and monopolies, question referred 36
Trusts, corporations forbidden and penalty 713
United States Constitution adopted 22
United States Courts, succeed to certain pending territorial cases 786, 911
United States official not to hold public office 275
University and State Educational Institution funds invested and used how 530.
University and State educational institutions controlled by Board of Education 530
Vacancies in judicial offices, filled how 307
Valuation required for new counties 660-664
Veto, Governor's power to 433
Washington, State of, sends congratulations 19
Water for public use, amendment offered 148-149
  Amendment and debate 156
  "Bill of Rights" final passage 253-4
Water, may be appropriated 376
  Rates and irrigation 550-571
  Rates controlled by assembly 376
  Rates, prior rights 533
  Rights and rentals 675-81
  Rights are public property 895-902
  Rights taxation question 472-9, 497-513
  Of streams, public property 376
  Supply resolution offered by Maginnis 274-5
  Supply, municipal debt for 642
Weapons for defense "Bill of Rights" 120
  Final passage 253
Witnesses, disposition of Bill of Rights, final passage 254-62
  Imprisonment of Bill of Rights 124-5
Woman's suffrage 915-916
  Committee report 855-856
  Resolution referred to Committee 490
  Speech by Blackwell 80-88
  Limited 404-408
Women, to vote at school elections amendments and debate 463-5
  Property rights of 585-7
Writs of Error and appeal, amendment and debate 295-296